

An analysis of the role of civil society organisations in  
promoting good governance and development in Zimbabwe:  
the case of National Constitutional Assembly (NCA)

by

DONALD CHOKUDA ZHOU

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SUPERVISOR: PROF S NDLOVU

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## **DECLARATION**

I declare that this research, An Analysis of the Role of Civil Society Organisations in Promoting Good Governance and Development in Zimbabwe: The Case of National Constitutional Assembly (NCA) is my own work. It is submitted for the requirements of the Degree, Master of Arts in Development Studies at the Department of Development Studies, University of South Africa and it has not been submitted before for any Degree or examination in any other University. Where I have used the work of other authors, I have properly acknowledged them and I have not copied any author or scholar's work with the intention of passing it off as my own. All the interviews and informal conversations that have been conducted for the purposes of this research report have been cited correctly and I have not passed off any of my participants work, suggestions and quotes as my own.

Signed.....

On.....Day of....., 2014

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## **ABSTRACT**

This thesis examines the role of civil society in promoting good governance and development in Zimbabwe. This is done through a case study of the National Constitutional Assembly (NCA). Specifically, the thesis looks at the role of constitutionalism as a tool in promoting good governance and development by situating the Zimbabwean struggle for constitutional reform within the context of an unprecedented socio-economic and humanitarian crisis that engulfed Zimbabwe at the beginning of 2000. One of the central questions explored in this thesis is that of the value of the concept of civil society in understanding African post-colonial situations in general and the Zimbabwean situation in particular. The thesis looks at the history of constitutionalism in order to assess if the Zimbabwean crisis could be understood within the context of a constitutional crisis. Therefore, the thesis ventures into the complex dynamics of state-civil society relations while at the same time examining the formation, structure and programmes of the NCA. This is meant to highlight how the NCA's internal governance system, its leadership style and accountability worked as well as if it reflected good governance or not. An analysis of NCA's relationship with donors is also presented in order to dispel or validate claims that civil society is just a front for western interests to effect regime change in Zimbabwe. Of critical importance in this study is how civil society (represented by the NCA) interacted with the government and the opposition political parties. The NCA actively participated in opposition politics coming in the open to urge its supporters to vote for the opposition and later ditched the opposition when they had disagreements but their reputation as impartial actors had been destroyed. The thesis concludes by questioning the strategies that are used by civil society in engaging with the government and that in their present structure they should not be antagonistic to the state but should work in tandem with the state for the attainment of good governance and development. Civil society organisations should be politically neutral in their pursuit of developmental goals and ought to practice what they preach by being democratic and accountable themselves.

## **KEY WORDS**

Civil Society Organisations, Constitution-making process, Good governance, Development, Neoliberalism

## **LIST OF ABBREVIATIONS**

AfDB	African Development Bank
ADB	Asian Development Bank
AGA	Annual General Assembly
AIPPA	Access to Information and Privacy Act
APRM	African Peer Review Mechanism
AU	African Union
CC	Constitutional Commission
CIDA	Canadian International Development Agency
CIVICUS	World Alliance for Citizen Participation
COPAC	Constitution Parliamentary Select Committee
CSOs	Civil Society Organisations
ESAP	Economic Structural Adjustment Programme
FTLRP	Fast Track Land Reform Programme
GPA	Global Political Agreement
GNU	Government of National Unity
IMF	International Monetary Fund
MDC	Movement for Democratic Change
MDC-T	Movement for Democratic Change-Tsvangirai
MDGs	Millennium Development Goals
MPs	Members of Parliament
MPOI	Mass Public Opinion Institute
NCA	National Constitutional Assembly
PCC	People's Constitutional Convention
POSA	Public Order and Security Act
RNE	The Royal Norwegian Embassy

SADC	Southern African Development Community
SIDA	Swedish International Development Cooperation Agency
UN	United Nations
US	United States
USAID	United States Agency for International Development
WB	World Bank
ZANU PF	Zimbabwe National African Union Patriotic Front
ZCTU	Zimbabwe Congress of Trade Unions
ZESN	Zimbabwe Election Support Network
ZINASU	Zimbabwe National Students Union
ZNLWVA	Zimbabwe National Liberation War Veterans Association

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## **CHAPTER 1: RESEARCH DESIGN**

### **1.1 Background to the Study**

This research study is largely motivated by what has come to be known as the Zimbabwean crisis. Zimbabwe's dramatic changes in the economic, political and social landscape since the early 2000 have become known as the Zimbabwe crisis. Raftopoulos (2004) defines the Zimbabwe crisis as a particular configuration of political and economic processes that has engulfed the country and concentrated the attention of the region since the year 2000. This crisis takes place against the background of deeply entrenched structural impediments which hinder the development of democracy and good governance in Zimbabwe. According to Ndlovu-Gatsheni (2003), the crisis is a consequence of blocked democratic transition at the turn of the century. The crisis is a reflection that the dominant nationalist ideology that guided the liberation struggle had become bankrupt. In general the country is facing a serious crisis of governance. The crisis also takes place on the backdrop of the emergence of an authoritarian nationalist state confronted with increasing internal dissent. Since the year 2000, the ruling Zimbabwe African National Union Patriotic Front (ZANU PF) party has carried out a series of political and economic interventions marked by widespread violence but conducted through the tropes of anti-colonial redress and anti-imperialist critique that has also found widespread resonance in the region and the African continent (Raftopoulos 2004).

In order to understand the genesis of the crisis, it is important to outline the Zimbabwe political culture. Zimbabwe's political culture is largely a product of four main influences that is the pre-colonial, colonial, the armed liberation struggle and the independence ZANU PF rule. The pre-colonial era was characterised by non-competitive politics. Competition for power was considered to be illegitimate and could prove fatal. Those who sought power had to find their polity elsewhere (Ndlovu-Gasheni 2003). "During this period there were kingship and chieftainships who when ordained would only lose power upon death. Such an idea easily translates to a life presidency. Thus even to this day, political competition in Zimbabwe is viewed with suspicion and open hostility" (Ndlovu-Gatsheni 2003). The colonial period that succeeded the pre-colonial times was even more autocratic as a system of

governance. There was racial discrimination and political participation was the prerogative of the whites only. Blacks were not allowed anywhere near the spheres of governance. The armed liberation struggle period was more or less shaped by the preceding systems of governance. Every African was expected to embrace the ideals of the liberation war and every one had to toe the line. This generated and institutionalised a culture of fear, conformity and unquestionable support. The nationalist parties and their armies were never democratically structured and did not operate in a democratic fashion (Ndlovu-Gatsheni 2003). They were highly commandist and authoritarian. Kagoro (2003) also argues that the militarisation of the liberation struggle also created a unique use of coercion as an instrument of mobilisation. Therefore in a very significant way the liberation struggle emphasised a non-consensual means of legitimisation. The nationalist movements paid scant attention to the issues of individual and civic rights in fashioning their vision of a liberated Zimbabwe. They were preoccupied with the transfer of power from the white minority regime to the black hands rather than with the contradictions in which such power should be exercised (Kagoro 2003). This hegemonic approach gave rise to a legacy of repressive and monolithic state politics in the post-colonial era that was suspicious and intolerant of the notions of pluralism and independent associational life. Pluralism and dissent of any kind continues to this day to be characterised as anti-revolutionary and divisive.

Although the various party structures of the liberation movements claimed to engage in and encourage participation and the active involvement of party members in decision making process, the militarist approach tended to brook no dissent. The liberation movements thus were regimentalist rather than democratic in their operations and management style (Makumbe 2003). It therefore explains why the ruling ZANU PF party in post-independence Zimbabwe became vulnerable to authoritarianism and personalised rule.

The independence or post-colonial state is a direct successor to the brutal and authoritarian settler colonial state as well as a product of a protracted armed struggle. The ZANU PF government that swept into power at independence was also permeated by the culture of intolerance, intimidation and violence derived from the liberation struggle. The liberation struggle instilled in many political leaders and their supporters a militaristic conception and perception of politics and political process (Ndlovu-Gastheni 2003). Up until the height of

the Zimbabwe crisis, ZANU PF was still priding itself in its violent past and its capacity to deploy its infrastructure on violent politics on any one who dared to challenge them. In fact the period until 2008, saw ZANU PF unleashing its structures including the military in perpetuating an ogre of violence that left the nation severely traumatised. Thus the character of the post-colonial Zimbabwe state was shaped by these historical realities (Ndlovu-Gatsheni 2003). These were basically shaped by coercion, violence and authoritarianism.

The conclusion of the liberation war was supposed to help the new nation in heralding the country's first opportunity and ideal chance to build democratic institutions that would really put people first and promote a democratic culture of governance. The people expected a break from the tradition of the liberation war violence and were looking up to more expanded democratic spaces, to the protection of their human rights and tangible material benefits. In other ways the African nationalist struggles were expected to install a 'people's state or 'people's government in place of the violent colonial state. This was not achieved because the post-colonial African state became a 'regulator' or social 'gendarme' whose main preoccupation was to moderate and contain the very contradictions of which it was a product, so as to maintain order and cohesion (Ndlovu-Gatsheni 2009). By so doing, the post-colonial state upheld the interests of the classes that dominated the social order and acquired its process in the process (Ndlovu-Gatsheni 2003). Therefore in its nature, structure and outlook, the post-colonial state is not people centred, it does not conform to the notions of putting people first but pursues the interests of the triumphant petit-bourgeois nationalists who led the struggle for independence (Ndlovu-Gatsheni 2003).

Thus, the post-colonial state under ZANU PF failed dismally to make a break from the tradition of the nationalist authoritarian and guerrilla violence as well as that of the colonial settler repression. The ruling party having been a product of the liberation war military structure failed to demilitarise itself in both practice and attitude as well as in managing civil institutions and the state at large. This had severe implications for democracy and good governance. From the outset the people's aspirations for democracy and good governance clashed with the different authoritarian legacies from the nationalist and liberation war. The new government thwarted the chances of the formation of new civic structures outside the ruling party and government patronage representing the different voices of civil society. The

government inherited the colonial and violent repressive legal machinery of the colonial state. This, taken together with the tradition of the African nationalist authoritarianism, a new intolerant state emerged. This explains why militarism and violence became part and parcel of the nascent Zimbabwe state (Ndlovu-Gatsheni 2003). Thus ZANU PF's adherence to socialist party organisational structures and systems of operational management has resulted in its failure to transform itself into a democratic political party (Ndlovu-Gatsheni 2009) with clear democratic ideals for the nation.

The focus of the new independence government in the early 1980s was on majoritarian issues and state led development programmes. This approach mocked the advocacy of civil and political rights as a veiled attempt to subvert genuine efforts by the state to empower the newly liberated black populace. Such advocacy work related to civil and political rights was labelled anti-state, anti-people and anti development. The ruling party moved away from the identification with the basic aspiration of the people. The government leadership pursued its own enrichment at the expense of the people. Corruption and primitive wealth accumulation became rife. Opposing views were muzzled.

The emergence of the post 1990 pro-democracy movements in Zimbabwe was in part linked to the contextual changes in the global political economy as well as explicit donor interventions rather than to direct interventions by the state or the state creating conducive environment for operations. By the 1990s the government adopted the neo-liberal structural adjustment programme without consulting the people. The introduction of these programmes led to massive retrenchments as well as removal of subsidies on goods and services. As a result the economy took a severe knock. Thus the introduction of the neo-liberal structural adjustment programme demonstrated that the people had been abandoned by the government. Instead of opening up political space, the government tightened its grip on power through being very intolerant towards the opposition.

Kagoro (2003) also traces the Zimbabwe crisis to the dismal failure of the International Monetary Fund (IMF)/World Bank (WB) structural adjustment policies that were adopted by the government in the 1990s and resulted in the impoverishment of Zimbabweans as well as the capture of the state by corrupt, self-seeking and authoritarian elite. The crisis was also caused by the contradictory nature of neoliberal democracy that prescribed the weakening

of the state at precisely the moment that human development deficits accumulated during the colonial and cold war eras required the intervention of the state. This in part compounded the inability of the state to redistribute resources in a coherent and orderly manner, hence the crisis of legitimacy and politics of chaos. The rise of the crisis of 'followership' caused by the failure of the post-independence leadership patronage systems based on political affiliation also led to the demise of competitive economics. These factors have had their manifestations in the endemic political violence and human rights violations as well as unbridled corruption that have resulted in asset stripping and poor stewardship of natural resources (Kagoro 2003).

In 2000, ZANU PF was confronted with the first real challenge to its rule and they radically restructured the terrain of Zimbabwean politics towards the politics of frontal assault that targeted the former colonial power, Britain, the local white population (especially the commercial farmers), the opposition Movement for Democratic Change (MDC), the civil society, farm workers and the urban populations among whom the opposition had developed its major support. Thus the legacy of this form of politics would be new problems that began to manifest in the Zimbabwean political economy. A particularly damaging feature of the ruling party's response to the Zimbabwean crisis has been the state's overarching articulations of intolerant, selective and racialised nationalist discourse (Raftopoulos 2004). This has been done through the deployment of patriotic history accompanied by an ideological attack on citizens perceived to be enemies as part of the project of delegitimising the opposition. The outcome has been the narrowing of a usable national past as well as the loss of democratic space in which to conduct national dialogue about both the colonial past and the post-colonial present.

Therefore, the Zimbabwean crisis which forms the background of this study is basically that of legitimacy, governance and economic decay. It is also a crisis born out of the frustrations of the independence aspirations going horribly wrong for the masses. The liberation war ideals have lost resonance and the state has become very brutal and even more autocratic. The crisis is worsened by the fact that the democratic embers are now trapped by the bankrupt and violent nationalist backlash. This is demonstrated by the widening polarisation between the government and civil society. The people are crying for a better life and protection from poverty, hunger and disease. The ZANU PF government's legitimacy is

under serious scrutiny and critique. Even the threat of violence has failed to silence the masses critique of the existing failure of the government. The mismanagement of the economy has rendered the country a basket case from being a bread basket of the region.

The constitutional debate that took centre stage in the country between 1998 and 2000 and continued until 2013 was therefore one of the several attempts to reach a breakthrough to the Zimbabwean crisis. Of critical importance to the debate is the fact that it was led by civil society as a means of unlocking a political logjam and a way of facilitating its role as a key player in promoting good governance and development. The crisis was real and the only way to come out of it was a collaborative approach and civil society was simply playing its central role as the third arm in governance. Civil society had been able to diagnose the problem that was plunging the country into a crisis and had come up with a prescription. The only way to move towards a new dispensation was to use constitutionalism as a means towards good governance and socio-economic development. The process for the first time since independence involved a popular national process and discussion.

Sadly however, the process that had begun with so much potential to move the country towards a new constitutional dispensation ended in the politics of bitter division with the ruling party using its defeat in the 2000 constitutional referendum to impose new authoritarian politics on the country's citizenry. It is thus the aim of this research to explore the roles that the civil society has played in the promotion of good governance and development especially against this background of state authoritarianism as manifested by the Zimbabwean crisis. As mentioned above, the civil society in Zimbabwe is one of the first role players to try and bring about a solution by the promotion and debate around the constitution as a way to solve the crisis of governance and foster national development in order to improve the quality of life of Zimbabweans.

## **1.2 Problem Statement and Rationale**

The failure by mostly African countries to achieve development despite large sums of aid having been poured has been problematic among development specialists. This has led to arguments as to whether development should be state led or if the state should embrace other partners in the quest for development and improve the people's lives. It has been noted that underlying the litany of Africa's development problems is a crisis of governance



(Ndulo 2001). Good governance would result in institutions that are more likely to adopt economic policies that would resolve the constraints that hinder economic development.

The United Nations (UN) and all the other lending institutions reports are unanimous in noting that Africa's inability to realise its potential is largely attributable to lack of good governance. There is a growing consensus concerning the central role that a good, efficient and capable government plays in the economic and social development of a country. The UN General Assembly has recognised that democratic, transparent and accountable governance and administration in all sectors of society are indispensable foundations for the realisation of social and people centred sustainable development can be laid upon. The answer to Africa's development quagmire lies in establishing democratic systems of good governance. It calls for a critical examination of the question of governance in Africa with the view of identifying the obstacles to its development and the possible approaches to the development of systems of governance that gives space to all groups as partners thereby avoiding conflict and instability.

The normative nature of the terms democracy and civil society have been highly debatable among different societies in space and time (Mafeje 1998). The renewal of interest in democracy and good governance has thrust the concept of civil society into a prominent position in both social science theory and development policy. Civil society organisations are seen as key players in the development and democratization process of any country especially given that they manufacture political consent and therefore are a source of legitimisation of state power. Development practitioners have come to the realization that it is not just the state institutions that essentially ensure a high standard of democratic governance but also that the civil society has a role to play. It has also been noted across the developing world that states with limited finances and riddled with poor governance and corruption have failed to lead development for all of their citizens. Within this context, alternative forms of development have been pursued and civil society organisations have increasingly been advocated as a means through which the gulf between the citizens' needs and existing services can be bridged.

The concept of governance describes certain forms of interaction between the state and the society. Such a mode of politics is considered modern in which the plurality of actors is

acknowledged. Societal problems are not solved by state institutions only but rather the state interacts with other actors such as the private sector and civil society organisations. This interaction is necessary because the quality of those problems exceeds the capacity of the state. This holds true for social problems for example in the context of poverty reduction. Therefore the governance perspective has not only changed the perception of civil society organisations has contributed to a re-evaluation of this sphere (de Weijer and Kilnes 2012).

The concept of civil society can be applied in order to change and enhance the relationship between citizens and the state as well as policy formulations and the implementations in the state sphere. In the present era of globalization, the state and the market economy is essentially important whilst the civil society and other transnational forces are increasingly and equally influential as well. This is because all these factors have led the state to play a role to promote national interest in relation to the international funding institutions. For the developing countries, the concern is to strengthen the role of the states and enhance the efficiency of the state apparatus through good governance in order to cope with the force of globalization and to achieve development goals. Civil society is an important force in the democratization process because it provides a link between citizens and the state. It also creates an environment that can be used to enhance community bond and decision making which is vital to civil participation and its development.

Civil society cannot replace the state but has a complimentary role by engaging the government to be more productive and efficient. Thus civil society has reached out its position as a common forum for addressing a range of public issues. It can thus be called a mouth piece of the nation. A country is therefore said to be more democratic where civil society organisations are active, vociferous and have no biases. The assumption is that civil society and good governance are mutually reinforcing. On one hand the reinforcement of good governance opens up new spaces for citizen participation and on the other hand an enabling environment is the key to allow civil organisations to become change agents that influence public policy in favour of democracy.

Civil society organisations has three main functions in the development and democratization process that is to articulate citizens' interest and demands, to defend citizens' rights and to

provide goods and services to the needy. Therefore, in the event that the state policies and programmes do not address the needs and aspirations of the society, civil society organisations must come in and represent the interests of the society. Thus in Zimbabwe the relationship between the state and civil society has been characterised by continuity and change (Raftopoulos 2000). The continuity has been characterised by the growing interdependence of the two in the context of a weakening state capacity faced with declining resources and the growing poverty levels that has forced the government to rely on welfarist interventions of civil society organisations and non-governmental organisations (NGOs). The change however has been seen in the state seeking to cover its capacity weakness by introducing greater control over civil society activities and the growing willingness of civil society to develop a more confrontational approach in their dealings with the state.

The state alone cannot bring about development without the assistance of other non-state actors thus there is need for non-state actors to complement government efforts. In the case of Zimbabwe, issues of mismanagement of the economy, state sponsored violence and corruption where the country is lowly rated in the corruption indices by organisations like the Transparency International and the Mo Ibrahim Foundation as well as natural disasters such as perennial droughts means that the civil society has an even bigger role to play in the state development efforts. Civil society can make a significant contribution to the development process both on its own as a third sector of the society as well as by working in partnership with the government. The concept of civil society embraces the action of people who join forces to achieve interests of a common good. The government operations should also rely on the civil society organisations as intermediaries for reaching the poor. In most countries especially in the developed world, governments are increasingly recognizing the civil society organizations' potential for working with the poor and their capacity for advancing small grassroots solutions that require considerable direct involvement which often achieves greater effectiveness than government executing agencies. Thus several governments are now favoring transferring programs and responsibilities to the domains of the civil society and the private sector.

In Zimbabwe, state driven development had dismally failed and hence non state actors emerge as part of the salvation. The years of independence had not brought tangible and

meaningful development more so with the government seemingly drifting away from being the government of the people, for the people and by the people. The populace had become desperate for ways that could transform their lives for the better. Thus the formation of the National Constitutional Assembly (NCA) should be seen in this light. The other problem in the road to developmentalism in Zimbabwe is that people began to openly discuss on what was the pre-requisite to a truly sustainable development. As such constitutionalism and rule of law was seen as important pre-requisites for the attainment of any meaningful development. The constitution had several loopholes which affected the country's governance and was seen as the main cause of violence, rampant corruption and stagnation in terms of development. Therefore to curb these problems there was need for the country to have a new constitution written by Zimbabweans for Zimbabweans which will defend the people and spell out the ideals of a nation in order to achieve good governance and development.

The proliferation of civil society in Zimbabwe is also linked to the adoption of the economic structural adjustment programme in line with the neo-liberal agenda of the International Monetary Fund and World Bank policies. The pronouncement in the neoliberal agenda was that state led development had failed and the best way to improve the people's livelihoods was through the active involvement of the civil society. The truth to the Zimbabwean situation was also that before the deregulation of the economy, the country's economy was a bit stable and liberalisation caused a lot of suffering to the people. So on one hand the liberalisation of the economy caused the economic downfall whilst on the other hand it encouraged the sprouting of civil society to fill the void left by the state. This research will seek to outline the role of civil organisations in articulating the problems of constitutionalism as a necessity to the promotion of good governance and development in Zimbabwe through a case study of the National Constitutional Assembly (NCA).

### **1.3 Research Aims and Objectives**

This study will aim to contribute to the existing body of literature related to the role of civil society organisations in promoting good governance and development especially in the developing countries of the south. This role also fits into the articulations of neoliberal theory and the World Bank (1998) that argues for democracy and good governance as key

tenets for development and for the provision of aid in developing countries. Mindful of the broad nature of the subject, the research will zero down and take the angle of a case study research of the NCA in Zimbabwe.

#### Objective 1

To situate the research within the current debates on state civil- civil society relations. To achieve this objective, the research will provide a critical review of literature and debates on the role of civil society organisations in promoting good governance and development. This will aim at creating a better understanding of the current debates in literature surrounding the existing normative frameworks in order to understand how these influence civil society organisations.

#### Objective 2

To explore the role and future of civil society organisations in promoting good governance and development in Zimbabwe. The purpose of this aim is to critique civil society organisations by looking at who they represent, whose interests do they pursue and if they broadly form part of the oppositional forces bent on the regime change agenda.

#### Objective 3

Describe the origins of the NCA, its structure and programmes in trying to deliver a people driven constitution to the people of Zimbabwe. The purpose of this aim is to be able to draw relevant recommendations through the knowledge of existing programmes as well as to gain an understanding of the operational challenges faced by the NCA and by extension civil society organisations.

#### Objective 4

Analyse and identify the perceptions of the NCA as an organisation, the government and ordinary citizens on the role of the NCA in promoting good governance and development. The objective of this aim is to situate what the people believe to be of critical importance in development. The level of understanding by the people is critical if citizens are to participate in developmental issues.

## Objective 5

To situate the current role of the NCA in view of the fact that the Inclusive Government of Zimbabwe adopted a new constitution for the country and the country has just had an election that has been won by ZANU PF party. This objective aims to assess the relevance of the NCA in the current dispensation.

## Objective 6

To provide conclusions and recommendations based on the research findings. This objective aims to provide information especially against the argument that civil society organisations are necessary to the development of a nation as argued by multi-national financial institutions in their provision of aid. Thus this will highlight if indeed civil society is crucial as part of the democratic trajectory.

## **1.4 Research Methodology**

### **1.4.1 Research Design**

In order to investigate the role of civil society organisations in promoting good governance and development in Zimbabwe through an examination of the role of the NCA, a qualitative methodology was employed, as detailed research planning was needed to produce precise and generalisable findings regarding the role of civil society organizations in promoting good governance and development. A qualitative methodology is a broad approach in social research aimed at understanding a particular social situation or event (Creswell 1994). This is a method of examining social research data without converting them to a numerical format. Babbie (2011) argues that qualitative analysis is the non-numerical examination and interpretation of observations for the purposes of discovering underlying meanings and patterns of relationships. It is therefore an investigative process entailing that the researcher makes sense of social phenomena by contrasting, comparing, replicating, cataloguing and classifying the object of study. Shank (2002) defines qualitative research as a form of systematic empirical inquiry into meaning. Systematic means planned, ordered, public and following the rules agreed upon. Empirical means that the type of enquiry is

grounded in the world of experience whilst the inquiry into meaning may mean that researchers try to understand how to make sense of their own experience. Denzin and Lincoln (2000) claim that qualitative research involves an interpretive and naturalistic approach. They argue that this means that qualitative researchers study things in their natural settings, attempting to make sense of or to interpret phenomena in terms of meanings people bring to them.

Qualitative method is based upon the need to understand human and social integration from the perspectives of participants. It is aimed at gaining a deep understanding of a specific organisation or event rather than a surface description of a large sample of population. It provides explicit rendering of the structure, order and broad patterns found among a group of participants. Qualitative research does not introduce treatments or manipulative variables or impose the researcher's operational definitions of variables on participants. Rather, it lets the meaning emerge from the participants. It is more flexible in that it can adjust to the settings. Concepts, data collections tools and data collection methods can be adjusted as the research progresses.

Qualitative research aims to get a better understanding through first-hand experience, truthful reporting and quotations of actual conversations. It aims to understand how the participants derive meaning from their surroundings and how their meaning influences their behaviour. Qualitative research uses observation as a data collection method. Observation is the selection and recording of behaviours of people in their environment. It is useful for generating in-depth descriptions of organisations or events or in obtaining information that is otherwise inaccessible and for conducting research where other methods are inadequate. In this study, observation was used to see the responses of the interviewees to certain questions. It also proved a good technique when the researcher would try to be with the NCA people as they were carrying out their day to day duties.

Another defining attribute of qualitative research is the open ended, inductive style of questioning and observation. Qualitative research methods answer the hows and whys of human behaviour, opinion and experience. Qualitative research also allows the collection and analysis of in-depth information on small groups. It entails that the researcher

immerses himself/herself in the everyday life of the setting chosen, entering the informants' perspectives and meanings. This broad based approach will guide this study.

#### **1.4.2 Case Study**

A case study of the NCA was used to get detailed information on the role of civil society in promoting good governance and development. The method was employed due to its strength in being able to capture the context specific details. According to Yin (2003), the case study is an empirical enquiry that investigates contemporary phenomena within its real life context, addresses a situation in which the boundaries between the phenomena and context are not clearly evident and uses multiple sources of evidence. It can be defined in other words as a research method that allows for an in-depth examination of events, phenomena or other observations within real life context for the purposes of investigation, theory development and testing or simple as a tool for learning. The approach ensures that the issues are not explored through one's lens, but rather a variety of lenses which allows for multiple facets of the phenomenon to be revealed and understood.

Yin's (2003) approach is based on a constructivist paradigm that claims that the truth is relative and that it is dependent on one's perspective. This paradigm recognises the importance of the subjective human creation of meaning but does not reject outright some notion of objectivity. Constructivism is built upon the premise of a social construction of reality and one advantage of this approach is that there is a close collaboration between the researcher and the participant, while enabling the participants to tell their real stories. Through these stories, the participants are able to describe their views of reality and enable the researcher to better understand the participant's actions. According to Yin (2003), a case study design should be considered when the focus of the study is to answer the 'how' and 'why' questions, when one cannot manipulate the behaviour of those involved in the study, one wants to cover the contextual conditions because they are relevant to the phenomenon under study or when the boundaries are not clear between the phenomenon and the context.

The main advantage of a case study approach is a good method to challenge theoretical assumptions. The case study approach provides an insight in all stages of theory building process and probably the most valuable in testing new theories. Case studies also provide



raw material for advancing theoretical ideas. The limitation to this method however, is that its control is minimal. The extent to which the researcher can determine and influence activities in the field is very low. The method of using a case study also has a limit as a source of evidence for theory. However, this study was not aimed at generating theory but at aiding to the empirical evidence for generating theory.

#### **1.4.3 Sampling Techniques**

Sampling may be defined as the selection of some parts of an aggregate or totality on the basis of which a judgment or inference about the aggregate or totality is made. In other words it is the process of obtaining information about an entire population by examining only part of it. The approach is done so as to be able to make generalizations or to draw inferences based on samples about the parameters of the population from which the population is taken. A sample therefore can be defined as any number of people, units or objects selected to represent the population according to some rule or plan. This research had a randomly selected sample of 30 people.

In quantitative research, sampling is the selection of a group of persons from a population with each person having an equal chance of being selected. The objective is to draw a representative sample and the results obtained from the sample can be generalised to the population. The two main reasons for conducting sampling are that the researcher may select people (sample) to investigate because of efficiency or convenience and may select a sample because of representativeness.

In this research sampling was done on the persons interviewed in both the NCA as well as government employees in the Ministry of Public Service and Social Welfare which regulates the operations of NGOs and Civil Society. The advantage of sampling is that the magnitude of operations is small thus data collection and analysis can be carried out accurately and efficiently. It enables the researcher to make a precise estimate of the standard error which helps in obtaining information concerning some characteristic of the population. Furthermore it is economical.

The researcher chose to use both probabilistic sampling and non-probabilistic sampling methods. In probabilistic sampling, the researcher used simple random sampling where

each element or persons in both the NCA and the Ministry of Public Service and Social Welfare had an equal probability of being selected. The use of probabilistic sampling method is bias free and an element cannot be sampled twice. Non-probability sampling is where items for the sample are selected deliberately by the researcher. In this research the main office bearers in both the NCA and the Ministry of Public Service and Social Welfare were interviewed. In non-probabilistic sampling the researcher used purposive sampling where the researcher was arbitrarily selecting the sample considered important for the research.

Snow ball sampling, a sociometric sampling technique generally used to study a small group was employed in the research. All persons in a group identify their colleagues or friends who in turn know their colleagues until the informal relationships converge into some type of a definite social pattern. This proved to be a useful tool in the research as one unit led to another. It was also important as the subject is highly subjective especially in a polarized environment like Zimbabwe and also in view of the fact that the research was done at a time when the NCA was in the process of transforming itself into a fully-fledged political party and therefore most of the former workers and members were no longer with the organisation. These individuals had to be traced for the interviews contacts that had already been made by the researcher made use of their social networks to refer the researcher to other people who participated or contributed to the study.

### **1.5 Data Collection Methods**

Data gathering instruments are key and paramount factors in conducting a purposeful research. The researcher must employ data gathering instruments that effectively tackle the research problem. The researcher used questionnaires, interviews, secondary data and personal observations in this study. The researcher tried to employ data gathering instruments that tackled the research problem effectively. Borg and Gall (1996) underscores this by stating that the quality of data elicited from a representative sample relies on the quality and reliability of instruments used. Thus data collection techniques namely secondary data, questionnaires, interviews and personal observations were used in this study in an attempt to analyze the role played by civil society organisations (NCA) in promoting good governance and development in Zimbabwe.

In gathering data the researcher also made use of triangulation. Triangulation is the process of strengthening the findings obtained from a qualitative inquiry by cross-checking information. A researcher who argues that his or her findings are derived from many different kinds of people across many different situations will be more convincing than another researcher whose conclusions are based on observations of one person in one setting (Potter 1996). Triangulation is used in bringing together different sources of information to converge or conform to one interpretation. With the convergence of information from different sources (documents, interviews and observations), settings and investigators, the researcher can make a powerful argument that the interpretation is more credible.

### **1.5.1 Questionnaires**

A questionnaire consists of a set of questions that are used by respondents selected from the population under study as well as self-administered questionnaires. Babbie (2011) defines a questionnaire as a document containing questions and other types of items designed to solicit information appropriate for analysis. These were used in this research study because the researcher wanted the participants to answer to the questions at their own time without any influence. Denzin (1990) notes that the questionnaire as an instrument in research has the advantage that it allows respondents in the study to answer to their questions at their own time with neither the pressure to respond to the questions quickly nor disturbing their daily activities. Such an advantage will prompt the researcher to make use questionnaires in this study. The use of questionnaires also fits into the objectivity of the study that aims to describe the objective reality independent of his subjective perceptions. Borg and Ball (1996) points out that such a stance is based on the assumption that objective reality exist such that if different researchers were to observe the same phenomenon using standardized measures, their findings will show agreement and convergence.

Furthermore, the use of questionnaires in a study enables the researcher to have a wide coverage of respondents at a minimum expense and this also helps to iron out individual idiosyncrasies (Zhou 2012). Thus, the researcher made use of structured questionnaires with both closed and open questions to solicit information. Semi-structured questionnaires

consisted of a list of open-ended questions based on the topic areas the researcher was studying. The open-ended nature of the questions provided opportunities for both the interviewer and interviewee to discuss certain topics in more detail. If the interviewee had difficulty answering a question or hesitates, the interviewer would probe.

Through the use of the questionnaires a number of people received similar questions to answer and these questionnaires will serve as permanent records of study. According to Franklin and Wallen (2003), the use of questionnaires helps to speed up the data analysis process. Thus, the returned questionnaires were subjected to a thorough screening whereby the researcher was checking for inconsistencies and after that they were finally edited. The questionnaires were pre-coded in order to facilitate the easy entrance of data and statistical analysis.

However, this method does not give the researcher any room for the interpretation of non-verbal reactions of the respondents and it would be costly for the researcher to produce a large quantity of these questionnaires to cover the targeted population. It was as a result of such limitations that the researcher complemented the deficiencies with the use of other methods.

### **1.5.2 Semi-structured Interviews**

Semi-structured interviews were generated from the use of the questionnaire. The use of interviews as a data collection method begins with the assumption that the participants' perspectives are meaningful, knowledgeable and can be made explicit and that their perspectives can affect the success of the project. In-depth interviews were used to gather information on the role of civil society in promoting good governance and development. Borg and Gall (1996) defines an interview as a conversation which is strictly meant for the collection of information. Interviews involve direct verbal interaction between the researcher and the respondents. Babbie (2011) also defines interviews as a data collection encounter in which one person (an interviewer) asks questions of another (a respondent). In in-depth interviews, the interviewer seeks to encourage free and open responses and therefore may trade off between comprehensive coverage of topics and in-depth exploration of a more limited set of questions.

This research used face to face interviews. Face-to-face or personal interviews are labour intensive but can be the best way of collecting high quality data, especially when the subject matter is very sensitive, if the questions are very complex or if the interview is likely to be lengthy. In-depth interviews are important because they help the researcher to explore a few general topics to help uncover the participants' views but respects how the participants frames and structures the responses. Thus the participants' perspective on the phenomena of interest should unfold as the participants' views it (the emic perspective) and not as the researcher views it (the etic perspective). The most important aspect of the interviewer's approach is conveying the attitude that the participant's views are valuable and useful.

In-depth interviews also encourage capturing the respondents' perceptions in their own words which is a very desirable strategy in qualitative data collection because this allows the evaluator to present the meaningfulness of the experience from the respondent's perspective. These interviews were conducted face to face. The presence of an interviewer also generally decreases the number of 'don't knows' and 'no answers'. Interviews generally attain a higher response rate as respondents generally seem more reluctant to turn down an interviewer standing on their doorstep. The interviews were also used to guard against confusing questionnaire items because the interviewer can clarify some issues that the interviewee does not understand. In interviews, the interviewer can also observe the respondents as they answer questions.

In-depth interviews were important for the purpose of this research because they allowed me to uncover the dynamics of the role played by civil society organisations in promoting good governance and development. I was able to ask for clarifications in areas where the answers are not clear enough for me as well as questions that required detailed information. The in-depth interviews were able to uncover to me the politics of the civil society in Zimbabwe as people were freely expressing themselves as well as how key decisions can sometimes be reached.

One strength of in-depth interviews is that it can be conducted in private. In this way the respondents were able to air out some of their misgivings about the organisation without the fear of being overheard and victimized. Arrangements were made prior to the interviews to have one room made available for the interviews. Thus the research tried to

get the best private environment for the interviews by making appointments with the respondents in the Boardroom of the NCA and the Ministry of Labour and Social Welfare. In cases where the Boardroom was not available, an Office (room) was made available. Interviews were able to extract information about the operations of civil society organisations, government, programmes of the NCA and its role in the country's development and other data that is important for analysis will be obtained.

### **1.5.3 Secondary Data**

Secondary data is the data that has already been collected and recorded by someone else and readily available from other sources and as such then problems associated with the original collection of data do not arise. The secondary data can be collected directly either from published or unpublished sources. The use of secondary data has gained interest and momentum due to the recognition that many qualitative datasets offer narratives that discuss issues related to the primary research but which have never been analysed thus carrying out secondary research can lend new strength to the body of fundamental social knowledge as well as applying a new social perspective or conceptual focus to the original research issues. In general the purpose for which the data was originally collected differs from that to which the current researcher wishes to use. Secondary data analysis is the reworking of already analysed data over which the present researcher had no direct control or in which he had no direct involvement.

Secondary data consists of relevant literature and policy documents, journals, newspapers, magazines, thesis and dissertations relevant to the area of study. Patton (2002) states that written material and other documents from organizations and programs records are essential in qualitative studies. This research carried out a comprehensive desk study of recent publications on the civil society organisations, good governance and development. Government documents and policies towards civil society organisations and the NCA in particular were also consulted. It should be noted that the subject under study falls within the broad study of the Zimbabwe crisis and a lot has been written. Furthermore with the neo-liberal ideologies that led to the rise of civil society as alternatives for development, there has been a large array of data on the subject.

It should be noted that for every qualitative study it is important to gather background data and to understand the historical context. The knowledge of the history and context surrounding a specific setting comes from the review of documents. In general documents are any preserved recording of a person's thoughts, actions or creations (Potter 1996). Documents may be examined to investigate patterns and trends. The review of documents is an unobtrusive method rich in portraying the values and beliefs of participants setting. However, the use of documents should entail a specialized analytic approach called content analysis and this research benefited from the use of this approach.

It is never safe to take published statistics at their face value without knowing their meaning and limitations and it is always necessary to criticize arguments that can be based on them. Thus the data collected by some other person should not be fully depended as they might have pitfalls. Thus it becomes necessary to find out the inconsistencies probable errors and omissions in the data. This necessitates the scrutiny of secondary data because it is just possible that the data might be inaccurate, inadequate or even unsuitable for the purposes of investigation. Hence the secondary data should possess the qualities of reliability, suitability and adequacy.

#### **1.5.4 Personal Observations**

Observation is a fundamental and highly important method in qualitative inquiry and is used to discover complex interactions in natural social settings. Observation entails the systematic noting and recording of events, behaviors and artifacts in the social setting chosen for the study. The observation record should be detailed, non-judgmental and should carry concrete descriptions of what has been observed. The researcher should not have a particular role in the setting and should enter the setting with broad areas of interest but without predetermined categories or strict observational check list. Observation is the technique of obtaining data through direct contact with a persons or group of persons. Since the main focus of qualitative research is naturalism, the researcher has to observe person or persons in their natural state as undisturbed as possible.

By being in the field, interacting and socialising with the subjects proved very valuable to the researcher. The researcher had two weeks in the field collecting and gathering data. The period brought the researcher closer to the subjects and other respondents who might be

outside the sample and access to informal discussions and gossips that reflect on the community. Babbie (2011) argues that one of the key strengths of field research is that it gives researchers a very comprehensive perspective. By going directly to the social phenomenon under study and observing it as completely as possible, researchers develop a deeper and fuller understanding of it. Direct observation also reduces distortion between the observer and what is being observed that can be produced by an instrument e.g. a questionnaire. It occurs in a natural setting and not in a laboratory or controlled experiment. The context or background of behavior is included in observations of both people and their environment and this is important because society shapes human behaviour. Observation can also be used with inarticulate subjects or others unwilling to express themselves.

### **1.6 Ethical Considerations**

Babbie and Mouton (2001) argues that ethical issues arise out of our interaction with other people, other beings and the environment especially where there is potential for, or where there can be a conflict of interest. Thus ethical issues are present in any kind of research. Babbie (2011) further contends that ethics is associated with morality. According to Creswell (1994), the researcher has first and foremost the obligation to respect the rights, needs, values and desires of the informants. Ethnographic research is always obtrusive, invading the personal spaces on informants and sensitive information is frequently revealed. The research process creates a tension between the aims of the research to make generalizations for the good of others and the rights of participants to maintain privacy.

There are six broad ethical areas that need consideration in carrying out research. These are voluntary participation, informed consent, confidentiality and anonymity, potential for harm and communicating results. These are interdependent and interlinked to one another.

Participation in research should be voluntary and there should be no coercion or deception. This participation is invited with a clear understanding that they are under no obligation to do so and that there will be no negative consequences for them if they do not assist.

Another important issue is to ensure that the participants fully understand what they are being asked to do and that they are informed that if there are any negative consequences of such participation. Anonymity requires that the researcher should not know the names of



the participants as well as revealing them thus participants can be identified on the basis of the level of analysis. Ideally the research should have minimum harm because participants can suffer physical, psychological, emotional and embarrassment harm. Participants have a right to the research outcome having provided information and the researcher should make effort to avail the finished research product to them bearing in mind that the researcher should guard against misinterpreting results.

Bearing in mind the above explanations and that this study was conducted at a time when the NCA membership had agreed that they could not continue as a civil society organisation but transform themselves into a political party, it was always going to be politically sensitive and thus there was need for the protection of informants' rights and desires. The researcher assured the respondents that their identity would always remain confidential and would not be revealed in the research report. In my introductions, I made sure that I emphasized that the research was purely for academic purposes, for a fulfillment of a degree with the University of South Africa (UNISA) and would not be used for any other uses. I also had an introductory letter from the Department of Development Studies of UNISA to confirm my status as a student. The respondents were informed that participation in the research was voluntary and they could terminate it any time if they feel like. They were also free not to answer any questions that they deemed inappropriate.

### **1.7 Challenges and Limitations of the Study**

The main principal subjects of this research study are the government and the NCA are very antagonistic in nature. This is also partly due to the role played by the NCA in the formation of the opposition MDC. The NCA at its formation seem to have a two pronged approach to constitutional reform that is to lobby government and also to be part of the body politic that could spring up as the main opposition. This was due to the fact that the country had a very weak opposition then and ZANU PF arrogance was partly blamed on the lack of a viable and strong opposition party. The government has always regarded the NCA as part of the opposition forces bent on regime change. Since the formation of the NCA, the government has always seen it as an appendage of the western countries that are not happy about the land reform exercise and is part of the broad oppositional forces funded by the west and former commercial farmers. This antagonistic nature has seen the NCA in some cases being

prevented from conducting meetings with the public and its members. This made it very difficult to get objective views on the NCA from the government or the other way round. In some instances, some government officials were just dismissive of the NCA's role. However, because of the nature of the questionnaire, it made it very difficult for respondents to be clouded in the acrimonious relationship between the government and the NCA. As such some government officials would talk about the political side of the NCA without addressing the central theme of the research of the role of the NCA in promoting good governance and development.

The fact that the study was also done during the period when the NCA was in the process of transforming itself into a political party also had its own challenges. This research was mooted when NCA was still a civil society organisation and the aim was to explore the role of civil society organisations in promoting good governance and development. So for the researcher to go into the field at a time when there was this transformation was a great challenge. However, the research had to be done in a historiographical manner looking at what NCA had done when it was still a civil society organisation.

Interviewing high ranking officials from both the NCA and the government proved to be a problem as they were not always available. Securing a slot to interview and fitting in my schedule was a problem. In the extreme about three interviews had to be done over the weekend so as to accommodate some officials. At its formation the NCA used to write several publications which have since dwindled over the years and it was difficult to get some of their reports. Moreover with the transformation into a political party it seems the documentation of the past was not viewed important. All resources had to be put towards recruiting members. The lack of reports of programmes seems to have been a problem for a long time as a Swedish International Development Cooperation Agency (SIDA), the Royal Norwegian Embassy (RNE) & the Canadian International Development Agency (CIDA) commissioned report in 2009 also alluded to it. It would also seem that the accord and unison that was part of the NCA at its formation is no longer there, it is not clear how many organisations still make up the body politic. The structures of the organisations seem at present nonexistent.

Despite these limitations, the researcher tried to explain to NCA officials that the research was not intended to carry out an audit but was purely for academic purposes. In any case, the researcher was only interested in the recent past when the NCA was still a civil society organisation.

### **1.8 Chapter Outline**

Chapter 2 is the literature reviews section that focuses on the theoretical concept on which this research is based. The Chapter captures the theory of neo-liberalism on which this research is based explaining how the concept of civil society came into being. It notes that the concept of civil society is part of the neo-liberalism agenda that tried to help countries to improve their economic wellbeing against the background of massive state failure. It tries to position the research within the existing body of literature and also look at the historical background of the study. The Chapter first dwells on the terms good governance and development, defining them and develops further into the notion of civil society. Civil society is discussed from the global perspective, the African perspective and then zeroing down to the Zimbabwean perspective.

Chapter 3 looks at the case study of the research, the National Constitutional Assembly (NCA). The Chapter outlines the history of constitutionalism in Zimbabwe in order to situate the history that led to the formation of the NCA. The Chapter also outlines how Zimbabwe got off to a false start after independence in 1980 in terms of laying the ground work of state development based on constitutional development. The Chapter is premised on the notion that when good governance and development failed, it was the role of civil society to come to the fore, raising the issues of constitutionalism as a prelude to good governance and development. The chapter also presents how the NCA was formed, its structure and programmes.

Chapter 4 gives a presentation of the current state of affairs. It outlines the governance structure of the NCA in the internal democratic governance as well as leadership and accountability. The study looks at issues around membership, gender development and representation, the relationship with donors and how they influenced programming. The Chapter also looks at the role of the NCA is the oppositional politics in Zimbabwe and its relationship and role in the Global Political Agreement (GPA) and thus by extension the

inclusive government that was born out of the GPA. The GPA was instrumental in championing constitutional reform process under the auspices of the Constitution Parliamentary Select Committee (COPAC) and the chapter looks at how the NCA had to deal with that. Civil society organisations are often criticised as elitist organisations and the chapter answers the question by looking at the NCA. The Chapter ends by discussing how the NCA transformed itself into a political party.

Chapter 5 is a presentation of the analysis of the results in terms of theory by analysing the strategies that the NCA used in the quest for a new constitutional reform. The chapter provides an analysis of the people's perceptions of the NCA, its effectiveness, its relevance and lessons that could be learnt from Zimbabwe's constitutional reform process. The chapter concludes by providing recommendations on the role of civil society organisations in promoting good governance and development and suggestions for further research.

## **CHAPTER 2: THEORETICAL AND HISTORICAL BACKGROUND**

### **2.1 Theoretical Framework**

This thesis is premised on the theory of neo-liberalization (liberal democratic theory) that gave rise to the concept of civil society as one of the pillars in development and the promotion of the good governance agenda. Central to neo-liberalism is the abolition of government intervention in economic affairs. It is based on the principle of a free market system. Neo-liberalism has been defined as a theory of economic practices that proposes that human wellbeing can be advanced by liberating the individual entrepreneurial freedoms and skills within the institutional framework characterized by strong property rights, free markets and trade (DeMartino 2000). According to Haque (1999), neoliberalisation is an ideological position based on the strong beliefs in the promotion of the general good by following the principles of free market and open competition, limited state intervention and welfare individualistic self-interest, rational utility maximization and comparative advantage in free trade. The free market system is seen as the best possible way for economic development. The main features are the rule of the market, cutting of public expenditure, deregulation, privatization and the elimination of public goods (DeMartino 2000). Theoretically, the assumptions of neo-liberalism are in line with the principles of neo-classical economics.

One of the most prominent common features of neo-liberalism is its emphasis on the role of the market and minimizing the interventionist role of the state. For the neoliberals, the market is the optimal space for the production and distribution of wealth and as the optimal vehicle for social mobility (Haque 1999). The neoliberal ideology requires the replacement of interventionist state by a non interventionist state and encourages the expansion of market forces by undertaking various market friendly policies. Policies such as deregulation and privatisation are encouraged. There is also belief in the principle of comparative advantage of free trade whilst opposing protectionist policies and the tying of economic growth to export expansion (Haque 1999). All this is achieved through economic deregulation, elimination of tariffs and a range of monetary and social policies favourable to business. Thus neo-liberalism can be seen as a development model that is very

comprehensive development strategy with economic, social and political implications. It is a model that involves a set of economic theories linking disparate policies together into a coherent recipe for growth with prescriptions for a proper role of key stakeholders such as labour unions, private enterprises and the state. Neo-liberalisation, therefore, is based on the belief that freely adopted market mechanisms is the optimal way of organizing all exchanges and goods. Free market and trade will set free the creative potential and the entrepreneurial spirit which is built into the spontaneous order of any human society and thus leading to more individual liberty and well being and a more efficient allocation of resources.

The current interest on civil society came particularly as a result of a persistent push for growth for the formal sector to achieve a liberal economy. Although the role of civil society was not clearly articulated or emphasized in the initial packages of good governance, it was later endorsed in the reconceptualised definitions of the concept. Liberal democratic theory argues for civil society as a sure recipe for democracy and development. Development practitioners have come to the realization that it is not just state institutions that essentially ensure a high standard of democratic governance but also that the civil society has a big role to play (Al-Amin 2008). In the present era of globalization, the state and market economy is essentially important whilst the civil society is equally important in advocating for the state to promote national interests.

The perceived failures of state led development approaches of the 1970s and 1980s fuelled an interest in Non-Governmental Organisations (NGOs) and the civil society as a development alternative, offering innovative and people centered approaches to service delivery, advocacy and empowerment. Their emergence have centered on their ability to offer a 'development alternative' and therefore seen to be making a lot of claims about more effective approaches necessary for addressing poverty and challenging unequal relationships thus justifying their role in filling the gaps caused by inefficient state provision of services (Banks and Hulme 2012). Their strength is seen in enabling to design services and programmes using innovative and experimental approaches centered on community participation and that through their programmes, they empower disadvantaged groups and help them to gain a voice in the governance space from which they have for a long time been excluded. The adoption of the term 'empowerment' as the bottom line to NGOs and

civil society is seen as their greatest asset because not only do they strive to meet the needs of the poor but they aim to assist them in articulating those needs themselves through participatory, people centered and rights based approaches (Banks and Hulme 2012). Thus, the NGOs and civil society are no longer minor actors on the development stage as in some cases they receive more funding than the government.

The period from the late 1970s to the early 1990s witnessed a major upsurge in neoliberal ideals in the context of the development process and development strategies (Öniş and Şenses 2005). This neoliberal revolution presented a major assault on natural developmentalism in the context of which the state had played an active role in the process. The ideological ascendancy of neo-liberalism at this time was accompanied by the rise of structural adjustment in aid policies, reductions in public expenditure and the withdrawal of state provided services. This radical reform led to the state being replaced by the market at the center of development strategies and poverty lost its position as an explicit concern. The continued donor distrust and frustrations with states generated and fuelled interest in NGOs and civil society as desirable alternatives viewing them favorably for their representation of beneficiaries and their role as innovators of new technologies and ways of working with the poor (Banks and Hulme 2012).

The neoliberal approach and its accompanying structural adjustment programmes started to be drawn back from the mid-1990s and the development discourse shifted again. The poor performances of the structural adjustment programmes led to the emergence of a new focus on the role of the state to ensure conditions necessary for market economies to work efficiently. Thus the poor performances and the growing perception of persistent poverty in developing countries brought to the fore the requirement of pro-poor performance service delivery as a necessary capability for development. There was the emergence of the good governance agenda and the state took center stage again alongside the recognition of the explicit need to target poverty alleviation through a more interventionist, welfare oriented, state centered and scaled up approach (Banks and Hulme 2012). The impact of this was that on one hand there was the re-governmentalisation of aid increased state funding in an attempt to influence recipient governments, drawing attention away from NGOs. On the other hand the good governance agenda embraced the language of democracy, human

rights and public participation thus consolidating the centrality of NGOs and civil society in the development process.

In the 2000s a new aid regime had evolved promising to move beyond growth focused neo-liberalism towards greater consultation between donors and recipients and a greater focus on poverty and responsibility for the nation-state. The new focus became the strengthening of the civil society and the recognition that NGOs constitute part of the civil society. Donors started to promote their role in political reform thus they were democratizers of development (Banks and Hulme 2012). Most of the good governance conditions were also desirable on their own right for example low corruption, democratic accountability, rule of law and service delivery. Thus democracy building and transforming the state-societal relations became a major priority. In the development discourse, it was argued that civil society provides a third leg to the trinity model of development with the other legs being the state led public sector model and the second leg being the private sector model for economic development and profit enterprises (Tandon and Mohanty 2000).

The idea of civil society and building a stronger wider participation to promote good governance has been a dominant component of global political and development forum for the last two decades. Bad governance is widely acknowledged to be one of the underlying causes of conflict, poverty and marginalization. Most theories on civil society grant an important role to civil society organisations (CSOs) in the governance process. CSOs generally have five key functions, approaches and roles in which they should fulfill in order to contribute to good governance. These are to plan strategically and adapt to the changing context, to put a Rights Based approach into practice, to develop capacities, to advocate for democratic good governance and to be examples of good internal governance. Therefore, governance is a negotiated process that is negotiated development through which the various interactions between the state and citizens result in the equitable fulfillment of the citizens' political, economic, social and cultural rights.

Therefore one can argue that much of the interest in civil society is linked to the global dominance of neo-liberal ideologies that envisaged a reduced role for the state and privatized forms of services delivery through the flexible combinations of governmental, non-governmental and private institutional actors (Lewis 2002). Thus the good governance



agenda has deployed the concept of civil society within the wider initiatives of supporting the emergence of competitive market economies, building better managed states with the capacity to provide more responsive services and just laws, and imposing democratic institutions to deepen political participation. Good governance is therefore premised on the suggestions that a virtuous cycle can be built between the state, economy and civil society leading to a balanced growth, equity and stability.

It must be noted that the idea of neo-liberalisation has found ardent critics in the development debate. It has been criticized for the subordinate role that it gives government in development. Its postulations have also not led to any meaningful social development in developing countries. Instead it has catapulted several countries into political crises. Much of the criticism has come from nationalists who argue that neo-liberalism is tantamount to neocolonialism. They have also noted that it aspires to intensify the abstractions inherent in capitalism, separating labour from its human context and replaces society with the market. Thus in the same way civil society has been criticized as alien to societies in the developing countries and thus are a ploy by the West to effect illegal regime change. Nationalists have argued that anything foreign should be treated or handled with care since the concerns may not be sincere. Thus some have argued that for example in Africa, there is no civil society but social movements (Moyo and Yeros 2005).

Neo-liberalism shares many attributes as with other essentially contested concepts such as democracy whose multi-dimensional nature, strong normative connotations and openness to modifications over time tend to generate substantial debate over their meaning and application. Thus neo-liberalism should be seen as a development model that is a neoliberal model comprehensive development strategy with economic, social and political implications. It is a model that involves a set of economic theories linking disparate policies together into a coherent recipe for growth or modernisation with prescriptions for the proper role of key actors such as civil society, private enterprises and the state (Haque 1999). The post 1989 dispensation of global good governance, conditionality had become an integral part of donor funding. Arguments for alternative economic models were drowned by the triumph of neo-liberalism. Thus the mobilisation for national democratisation offered new opportunities for a broader regional and international audience. Neo-liberalism

became the only opportunity for economic growth and good governance became the catch word and the highway to prosperity.

Presenting on the case of the Zimbabwean crisis, Ndlovu-Gatsheni (2006) has argued that Zimbabwe's development conundrums need to be conceptualised within the broader debates on the African crisis in general and the deeper struggle between two ideologies of nationalism and neo-liberalisation which are both fundamentalist in their truth claims and annihilatory in their rejection of each other. Thus Ndlovu-Gatsheni (2013) argues against the Washington Consensus view that there is no alternative to neo-liberal orthodoxy and further argues that the neo-liberal ideology speaks of western domination and exploitation as opposed to co-evolution between the western world and the non-western world. Ndlovu-Gatsheni (2013) argues for decoloniality as a new liberation ideology that can lead to development and sees the current problems bedevilling African states and Zimbabwe in particular in terms of development as emanating from the consequences of incomplete decolonisation, incomplete nation building and contested state making.

## **2.2 Good governance and Development**

Good governance is the buzzword in this era and has swept public attention. It emerged as an off-shoot of the neo-liberalisation agenda. It has become a significant pillar in the consideration of a state's ability to conform to the universally accepted democratic standards. It has also become an essential pre-condition for development. Countries with quite similar natural resources and social structures have shown different performances in improving the welfare of their people and this has been attributed to good governance. Poor governance stifles development. It has been noted that development inevitably suffers in countries that have high cases of corruption, poor control of public funds, lack of accountability and human right abuses. Good governance is now viewed as essential for promoting economic growth and alleviating poverty and it is assumed that without good governance the benefits of reform will not reach the poor and funds will not be used effectively (see World Bank 1992, 1998).

Good governance has been defined in different ways by different people. The World Bank (WB) has been a prolific producer of documentation discussing good governance as a general tool in international development. According to the United Nations (UN),

governance is considered 'good' and 'democratic' to the degree in which a country's institutions and processes are transparent. Its institutions refer to such bodies as parliament and its various ministries. Its processes include key activities as elections and legal procedures, which must be seen to be free of corruption and accountable to the people. A country's success in achieving this standard has become a key measure of its credibility and respect in the world. Good governance promotes equity, participation, pluralism, transparency, accountability and rule of law in a manner that is effective, efficient and enduring. In translating these principles into practice, we see the holding of free and fair elections, representative legislatures that make laws and provide oversight and an independent judiciary to interpret those laws. According to the UN the greatest threat to good governance comes from corruption, violence and poverty, all of which undermine transparency, security, participation and fundamental freedoms. The United Nations Development Programme (UNDP) defines good governance as referring to governing systems that are capable, responsive, inclusive and transparent. It entails meaningful and inclusive political participation and improving governance should include more people having a say in the decisions which shape their lives. The African Development Bank (AfDB) in its 2000 Bank Group Policy on Good Governance defines good governance as a process referring to the manner in which power is exercised in the management of the affairs of a nation and its relations with other nations. The policy identifies the key elements of good governance as accountability, transparency, participation, combating corruption and the promotion of an enabling legal and judicial framework. The World Bank defines it as the manner in which power is exercised in the management of a country's economic and social resources for development (World Bank 1994). The Asian Development Bank (ADB) also defines it as the manner in which power is exercised in the management of a country's economic and social resources for development (Asian Development Bank 1995).

For the Asian Development Bank, the concept of good governance focuses essentially on the ingredients for effective management. Thus irrespective of the precise set of economic policies that finds favour with the government; good governance is required to ensure that those policies have their desired effect. In essence, it concerns norms of behaviour that helps to ensure that governments actually deliver to their citizens what they say they will deliver (Gisselquist 2012). The World Bank (1994) report concludes that development can

only take place if a predictable and transparent framework of rules and institutions that exists for the conduct of public and private business. The essence of good governance is described as predictable, open and enlightened policy together with a bureaucracy imbued with a professional ethos and an executive arm of government accountable for its actions.

The concept of good governance came into prominence especially in Africa when donors decided that it was not enough to institute economic reforms in Africa but that it was necessary to reform the manner in which African governments were carrying out their business (Tandon 1996). Although it was necessary, the question is why governance was not linked to development before since development is clearly not simply an economic exercise. Nonetheless, the framework of development is essentially a post-World War 2 phenomenon. The term good governance was introduced by the World Bank in 1989 in order to characterise the crisis in Sub-Saharan Africa. The big question that astounded donors by then was why Africa had remained stagnant or in some cases regressive in terms of development when large sums of money had been pumped through aid. The World Bank then diagnosed that the crisis in Africa was that of governance. The World Bank thus embarked on utilising the concept of governance as it grappled with the conundrum of why aid had failed in Africa. It focused on inwards to the institutions governing the economy and the implementation of structural reform. It found that the problem was in the management of countries' economies and social resources. Good governance is understood by many especially in the creditor community as something that combines efficient (accomplishing tasks in the right things that citizens want done) and effective (doing the right things that citizens want done) service delivery while ensuring that political corruption is avoided and curbed in these processes (Goldsmith 2003).

Thus the good governance agenda emerged after the cold war as a concern for the development practitioner. In aid circles, it also became the most prominent paradigm within which to direct all political reform efforts. The good governance agenda was premised on the suggestions that a virtuous cycle could be built between the state, economy and civil society leading to balanced growth equity and stability. Since the early 1990s, the good governance agenda has deployed the concept of civil society within the wider initiatives of supporting the emergence of more competitive market economies, building better managed

states with the capacity to provide more responsive services and just laws and improving democratic institutions to deepen political participation.

Good governance implies a government that is democratically organised in a democratic political culture and with efficient administrative organisations with the right policies especially in the economic sphere (Anowar Uddin 2008). At the constitutional level good governance requires changes that will strengthen the accountability of political leaders to the people, ensure respect for human rights, strengthen the rule of law and decentralise political authority. At the political and organisational level, good governance requires the attributes of political pluralism, opportunities for extensive public participation in state matters and incorruptibility use of public powers or offices by the servants of the state. In administration, good governance requires accountability and transparent public administration and effective public management as well as the capacity to design and implement sound and good policies.

Good governance has grown to be widely recognized as a basic condition for sustainable development. According to Masson (2005) there is a general and well documented agreement that good governance is a key factor in the success of economic and social development strategies. Individuals and groups in development derive their motivation from the ideological and spiritual commitment to social reform and change. The term good governance is thus an indeterminate term used in the development literature to describe how public institutions conduct public affairs and manage the public resources in order to guarantee the realization of the aspirations of the citizens. It can also be defined as the manner in which power is exercised in the management of a country's economic and social resources for development. Former United Nations (UN) Secretary General Kofi Annan once remarked that good governance is perhaps the single most important factor in eradicating poverty (Hyden, Court and Mease 2003). The UN and multilateral institutions' reports are unanimous in noting that the inability of several countries to realize their potential especially in Africa is largely attributable to lack of good governance. There is a growing international consensus concerning the role of good, efficient and capable government plays in the economic and social development of a country. The UN general assembly has recognized that democracy, transparent and accountable governance in all sectors of the

society are indispensable foundations for the realization of social and people centered sustainable development.

Donors now widely accept that the quality of governance does matter for development performance and aid effectiveness. They have since expanded their work on governance and political issues to include supporting the development of international agreements and initiatives on governance, substantial funding and technical assistance for governance reforms and capacity building in developing countries, promoting policy process that foster participation and supporting regional mechanisms for improving governance such as the African Peer Review Mechanism (APRM). Many donors now consider governance issues in selecting focus countries or in information on their aid allocations. The World Bank uses the Country Policy and International governance assessment for aid allocations. Such policy briefs have put forward ideas on a set of core governance issues and considerations for aid allocations and country programming. Better orienting aid interventions to governance context would help make development assistance more effective and benefit the poor in developing countries and also reassure tax payers in donor countries (Anowar Uddin 2008).

Good governance has many attributes. It is effective, participatory, transparent, accountable, and equitable and promotes the rule of law thereby creating a capable state. A capable state is one that exposes good governance and is characterized by transparency, accountability in the conduct of national affairs, the ability to enforce law and order throughout the country, respect for human rights, effective provision of infrastructure, limited role in the market economy, creation of favourable policy environment and seeking to walk in partnership with the private sector and civil society (Mdulo 2001). Other characteristics of a capable state are the acceptance of the opposition and competitive politics, predictable, open and enlightened policy making, a bureaucracy imbued with professional ethos acting to further the public good, maintenance of fair trade terms between the rural and urban sectors, recognition and respect for boundaries between itself and the private sector and civil society. These characteristics enable a state to effectively perform its role of developing a country and bringing about a better life for all its citizens. Good governance can result in governments that are more likely to adapt to economic policies that would resolve the constraints that hinder sustained economic growth.

Good governance is predicated upon mutually supportive and cooperative relationships between government, civil society and the private sector. The nature of relationships among these three groups of actors and the need to strengthen viable mechanisms to facilitate interactions thus assumes critical importance. It is also important to note that good governance is quite normative in conception. The values that provide the underpinning for governance are values postulated by international donor institutions. Since governance is the process of decision making and the process by which decisions are implemented, an analysis of governance focuses on the formal and informal actors involved in decision making and implementing decisions made and the formal and informal structures that have been put in place to arrive at and implement the decision.

Proponents of the good governance agenda see it as a worthy goal and a means through which to impact a variety of other outcomes such as economic growth and development. It is further argued that good governance should be at the centre of development policy and that donors should not only provide positive support for governance reforms in aid recipient countries but should also incentivise better governance by taking into account the quality of governance in decisions about the distribution of foreign assistance. Opponents of good governance raise strong challenges. Critics especially in aid recipient countries argue that the use of governance criteria in the allocation of aid effectively introduces political conditionalities and imposes Western liberal models of democracy.

The components of good governance lead to development or alternatively the interaction of the components of good governance causes development. Development is the most fashionable word for both developed and developing countries. Its importance can be seen in the fact that the United Nations adopted the Millennium Development Goals (MDGs) in order to try and improve the standards of living (to promote development). Defining development is highly contestable, with economists using two methodologies of the income per person and the economic growth criterion. However, it must be noted that the issues that determine development are broader than that. A simplified definition of development is the change, growth and improvement over a period of time that is the process of economic and social transformation. Thus for this process of economic and social transformation to occur, there is need to adhere to good governance. It is also important to note that all these elements/components of good governance are present in a strong civil

society participating in public affairs where all members of the society act under the rule of law. This research takes the critical issue of constitutionalism as articulated by civil society as of paramount importance to the attainment of good governance and therefore leading to development of Zimbabwe as a nation.

### **2.3 Civil Society: Global Perspective**

Civil society is truly an international idea and has emerged as one of the key study in the study of comparative politics today. Recognition of the importance of civil society has risen on the international agenda in recent years. Increasingly civil society organisations have become an integral part in policy debates, norms and standard setting processes. They have also become part of the governance arrangements at both national and international level. It has become very difficult to imagine a global governance arrangement being negotiated multilaterally without the participation of civil society. The rise of civil society within the sphere of international development becomes very evident when comparing aid effectiveness. The growing interest in the public arena for global public goods has further deepened the primacy lent to global civil society (de Weijer and Kilnes 2012).

According to most donor organisations, civil society is an instrument that will make developing countries especially African states more democratic, transparent and accountable. Over the past decade, attempts to provide a programme to secure democracy in Africa have come to depend substantially on civil society organisations as drivers to the democratic process. In the rapidly increasing literature on democratisation, much attention is paid to the public roles that civil associations undertake either to confront authoritarianism or to support newly democratic states (Kasfir 1998a). Such a concept of civil society has been shaped to serve the goal of better governance particularly democratic reform. Thus the existence of an active civil society is crucial to the vitality of political democracy and the nurturing of civil society is perceived as the most effective means of controlling repeated abusers of power, holding rulers accountable to their citizens and establishing the foundations for durable democratic government.

Since the end of the cold war, there has been a global ubiquity to the concept of civil society among policy makers in different parts of the world of its relevance to strengthening democracy and development. Its roots can be found in both the liberal and Marxist



traditions of European political thought. For much of the latter part of the 20<sup>th</sup> century, the development debate has focused on the state or the economic forces underlying a country's aspirations to make progress. The growing focuses on participatory development and the idea that institutions outside the state are also important contributors to social and economic advancement gave a new significance to civil society. Civil society is made up of associational life that reflects the extent to which citizens share their personal grievances and demands with others. It is an arena where the private becomes public and social becomes political (Hyden et al 2003). It is an arena where values are formed and expressed, the interests are articulated. The broad purpose of this research is to provide some reflections on whether or not the concept of civil society can be useful both in terms of analysis of social and political processes and in relation to policy interventions aimed at poverty reduction and development especially in non-western societies.

The term civil society is used with different meanings by different authors in various contexts. It is also used by critics and activists as a reference to sources of resistance and to that domain of social life that needs to be protected especially against globalisation. Within the United Nations context, the term has been a source of controversy, as it is used to mean or include both business and private voluntary organisations. The working definition of the London School of Economics Centre for Civil Society is considered to capture the multifaceted nature of the concept whilst also being empirically and analytically useful. According to the London School of Economics Centre for Civil Society, civil society refers to an arena of un-coerced collective action around shared interests, purposes and values. In theory its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces diversity of spaces, actors and institutional forms varying in their degree of formality, autonomy and power. Civil societies are often populated by organisations such as registered charities, development non-governmental organisations, community groups, women's organisations, faith based movements, professional associations, trade unions, self-help groups, social movements, business associations and coalition and advocacy groups.

According to Makumbe (1998) there are as many definitions of the concept of civil society as there are authorities on the subject. Makumbe (1998) has defined civil society as an

aggregate of institutions whose members are engaged primarily in a complex of non-state activities such as economic and cultural production, voluntary associations and household life and who in a way preserve and transform their identity by exercising all sorts of pressures or controls upon state institutions. From the definition two characteristics can be noted, that is the fact that civil society is a behavioural space between the state and the market where value norms of collective purposes are given precedence over those of the state and market and secondly that civil society is the organisational or associational action that oppose hegemony by a single social system such as state and the market or that seek to proffer alternatives in place of perceived weak institutions or process (Ncube 2010). Bratton (1994) has defined civil society as a sphere of social interaction between the household and the state which is manifest in norms of community cooperation, structures of voluntary association and networks of public communication. Alfred Stepan has derived his definition in the contemporary context of political liberalisation and democratization in Latin America arguing that civil society is an arena where manifold social movements and civil organisations from all classes attempt to constitute themselves in an ensemble of arrangements so that they can express themselves and advance their interests (Lewis 2002).

CIVICUS (the World Alliance for Citizen Participation), an organisation that represents civil society organisation in the World defines civil society as an arena, outside of the family, the state, and the market where people associate to advance common interests. This definition focuses on citizen engagement and recognises citizens rather than organisations as the basic building block for civil society. It also covers a wide range of collective action initiatives and associational life. It deliberately avoids focusing on organisations, as this tends to lead towards an assessment of civil society according to the number and forms of existing organisations (de Weijer and Kilnes 2012). The CIVICUS definition also sees civil society as an arena that is the space where citizens associate to advance common interests as well as where debates and battles can take place over narratives and visions for the future. Thus such an arena can take many forms, depending on the type of institutionalised and informal space that exists in a given society. Civil society is therefore both a reflection of societal dynamics and the arena in which these dynamics play out.

Lewis and Kanji (2009) have argued that during the last two decades, the political concept of civil society has come to form part of the language of development. Civil society is taken to

mean a realm or space in which there exists a set of organisational actors that are not part of the household, the state or the market (Lewis and Kanji 2009). These organisations form a wide ranging group that include associations, people's movements, citizens' groups, consumer associations, small producer associations, women's' organisations, indigenous people's organisations and non-governmental organisations (NGOs). Since this array of organisations and associations is public without being official, civil society advocates argue that it enables citizens to debate and take action around public issues without the overt direction by the state (Lewis and Kanji 2009). There is no single concept of civil society that exists but instead there is a bundle of slightly different though at times frequently overlapping understanding of the term. The concept of civil society has also come to be increasingly used with reference to global and international processes, as civil society groups seeks to represent themselves across nation state boundaries by forming global institutions.

Civil society is characterised by autonomy from both state and social interests, capacity for collective action promoting interests or positions, absence of intention to govern the polity and agreement to act within civil rules conveying mutual respect (Kasfir 1998a). Therefore, civil society incorporates organisations whose formal rules insulate them from demands from above and below. The organisations can act independently of the state actors as well as their constituencies. They are formed for specific, preferable narrow purposes that do not include seeking state power. They follow a code of conduct that contemplates listening to opponents, pursuing political compromise and engaging in a transparent behaviour. Thus in short, they accept the rules they attempt to enforce on the state.

This concept of civil society is meant therefore to create a political system that will help sustain democracy after it had been conceded by a formerly reluctant authoritarian state. The ultimate objective is thus to adapt or create civil associations that are willing to work within the system rather than to shape organisations that intend to combat the state. The 1996 USAID report insists for example, that sustaining newly emerging democracies will depend on building autonomous centres of social and economic power that promote accountable and participatory governance (USAID 1996). Civil society organisations inculcate democratic habits among their members, build a culture supporting democracy and through advocacy, they influence the government to adopt positions that their members support as

well as advocating to follow formal rules facilitating open, free and fair political debate or discussions (Kasfir 1998a). From the 1980s the ideas of civil society began to be increasingly invoked within development policy as part of wider debates about politics and democratisation, public participation and improved service delivery (Lewis and Kanji 2009).

### **2.3.1 Origins of Civil Society**

Civil society can be traced back to the period when modern ideas of democracy were beginning to take root. It is historically connected to the rise of capitalism and the evolution of the modern state in the Hiberian sense of rational legal structures of governance. Hyden et al (2003) argues that it as much an integral part of development of the west as is either market or state. The source of its conceptual theory is more than one and early contributions varied along the principal parameters of the concerns as to whether civil society is primarily defined by economic or sociological factors focusing on the extent to which the economic activity is privately controlled or the role associations play as intermediaries between family and the state. The other conceptual theory concerns the relation between the state and civil society, for they are seen as autonomous of each other or as organically linked.

Civil society has so many roots. This thesis will highlight briefly some of the key philosophical arguments developed historically behind our current view. One of the major differences is over whether the state and society should be intrinsically linked to form a civil society. For example, Aristotle saw civil society as a single entity comprising all social and economic and political aspects of life, a community of citizens who choose to live under an agreed system of law (Alqadhafi 2007). In contrast, Hobbes saw civil society as being constructed by the state, which imposes enough control on society to allow citizens to live together. In this argument, Hobbes opposed Aristotle who thought that society constructed civil society but both thought that society and the state were intrinsically linked.

In opposition to Hobbes, Locke argued that the state arises from society and is needed to restrain conflict between individuals. According to Locke, individuals are part of a society that predates the existence of a state and therefore society is not constructed by the state (Alqadhafi 2007). He saw people being able to live together in the state under natural law, irrespective of policies of the state. This self-sufficiency of society outside the control of the

state was given weight by the growing power of the economic sphere which was considered part of the civil society, not the state. The state is therefore constructed out of, and given legitimacy by the society which also retains the authority to dissolve the government if it acted unjustly (Alqadhafi 2007). The state cannot be given unlimited sovereignty because that would pose a threat to individual freedoms derived from natural law. Therefore there must be a social contract between the rulers and the ruled that not only guarantees these rights but also gives the state the authority to protect civil society from destructive conflict (Hyden et al 2003). A constitutional arrangement that both the state and civil society respects is the cornerstone of liberal democracy. Other writers continued with this distinction of civil society and government. The state kept its function of maintaining law and order that Hobbes had stressed, but was considered to be separate from society, and the relationship between the two of them was seen to be subject to laws that gained their legitimacy from society, not from the state. For example, Montesquieu saw the state as the governor and society as the governed with civil law acting as a regulator of the relationship (Alqadhafi 2007). The importance of the law in regulating the way the state and society interacted was obvious to many writers at the time who considered that a government that did not recognize the limitations of law could extend to become an over-reaching tyranny.

However, it is important to note that all these earlier definitions of civil society had one common denominator, that civil society was defined in contrast to 'uncivil society' that is the state of nature out of which humans had managed to rise by accepting a system of law as enforced by the state. The two thus cannot exist without the other, the state controls society so that it may become a 'civil society'.

The concept of civil society as completely separate from and contrasted to the state was started by Hegel and Max. Hegel recognised this separation as the 'achievement of the modern age'. However, the need for the state to regulate civil society in order to protect it from the less sociable instincts of people continued (Alqadhafi 2007). The German philosopher G.W.F Hegel argued that self-organised civil society needed to be balanced and ordered by the state otherwise it would become self-interested and would not contribute to the common good. Both approaches shaped the concept's early evolution. In Hegel's perspective, the state exists to protect common interests as it defines them by intervening in the activities of the civil society. Hegel saw civil society as largely comprising the

economic sphere of social life and that without the state to balance and order civil society it would become dominated by the pursuit of individual interests' especially private acquisitiveness and this would harm the common good.

Paine's view is quite different. He draws on the traditions of the Scottish Enlightenment and especially the Scottish Enlightenment thinker Adam Ferguson who saw civil society as a socially desirable alternative to both the state of nature and the heightened individualism of emergent capitalism (Lewis 2002). His position was more anti-statist. According to Paine any expansion of the state power poses a threat to the liberties that keep civil society alive. In his Libertarian view, it is the market rather than the state that allows civil society to grow. The latter happens whenever individuals are free to exercise their natural rights. The state and civil society therefore cannot be viewed as reinforcing each other. Their relation is reflective of zero-sum game (Hyden et al 2003).

Moving from the social and political sphere to narrower organisational focus, the work of Alexis de Tocqueville has been widely influential and has been used to support arguments in favour of civil society. De Tocqueville's positive account of 19<sup>th</sup> century associationalism in the United States stressed volunteerism, community spirit and independent associational life as protection against domination by the state and indeed as counterbalance which helped to keep the state accountable and effective (Lewis 2002). De Tocqueville was alarmed not only by the prospect of a powerful state but also by the tyranny of the majority. Associations in his view, constituted the strongest bulwark against the unmediated popular will. Self-governing associations educate citizens and scrutinise state actions. They encourage distribution of power and provide opportunities for direct citizen participation in public affairs. Without taking a strong pro-market view as Paine, De Tocqueville still adopts a voluntarist view of civil society. It is capable of protecting and promoting the interests of individuals regardless of their socio-economic position. Hegel breaks with tradition of civil society as a natural phenomenon and instead regards it as a product of specific historical processes. Division of labour creates stratification within society and increases conflict between strata. Civil society in his account is made up of the various associations, corporations and estates that exist among the state. The form and nature of the state is a result of the way civil society is represented and organised. This according to those that preceded it tended to stress the role of civil society as one in which some kind of

equilibrium was created in relation to the state and the market (Lewis 2002). The neo-Tocquevillian position can now be seen in current arguments in many Western countries that the level of associationalism within a society can be associated with positive values of trust and cooperation.

There is a different strand of civil society thinking that has also been influential in some parts of the world. This strand is influenced by Antonio Gramsci. He was also influenced by the Marxist ideas, who argue that the economic dominance of the bourgeoisies gives it control of civil society via the state. Gramsci wrote much later than the earlier civil society theorists. He argued that civil society is the arena, separate from the state and market with which ideological hegemony is contested, thus implying that civil society contains a wide range of different organisations and ideologies both of which challenge and uphold the existing order (Lewis 2002). Antonio Gramsci, a foremost Marxist analyst of civil society bypasses the economic determinism of Marx by arguing that associations are the mechanisms for existing controls in society. By transferring focus from the state to civil society as the key arena for conflict, Gramsci concludes that civil society harbours the resources needed to develop counter hegemonic norms to those prevailing at the state level. Thus Gramsci's emphasis is on the role of social institutions in either buttressing or challenging state power (Bratton 1994). Gramsci's ideas were influential in the context of the analysis and enactment of the resistance to totalitarian regimes in the Eastern Europe and Latin American countries from the 1970s onwards. Gramscian ideas of civil society can also be linked to the research on social movements that seeks to challenge and transform structures and identities. Therefore, Gramsci was conceptualising civil society as the site into which state power was projected and consolidated in capitalist societies but also as a location where contestation and resistance to hegemonic power was possible (Lewis and Kanji (2009).

Thus the origin of civil society has connections to the modernisation of western societies. As market and the state emerged in Western Europe and North America, so did civil society. In their approaches to civil society over the years, Europeans have followed in the footsteps of Locke and Hegels whilst the United States (US) has followed the path closer to Paine and Tocqueville. This is reflected in the way they approach support for democratisation in other parts of the world. The USAID focuses on privatisation and economic liberalisation to a

greater extent. Similarly in supporting civil society, they tend to act on the premise that associational life is dependent on the state. The Europeans stress the interconnectedness between the state, market and civil society e.g. in the way they see the role of governance in development.

### **2.3.2 Civil Society in Contemporary times**

In the post-modern era or contemporary times, the concept of civil society is associated with the politics of democratisation (Ncube 2010). Contemporary conceptions of civil society identify the activist version, neoliberal version and the post-modern version of civil society. The activist version is informed by the struggles against military regimes in Latin America and against authoritarian regimes in the former Soviet bloc in the 1970s and 1980s. Most recently it has been imported into sub Saharan Africa (Ncube 2010). In Latin America, the theology of liberation and the Gramsci approach influenced the politics against military dictatorships and in Eastern Europe a Tocquevillian conception of a self-organising civil society autonomous from the state was summoned to oppose authoritarian communist states. The neoliberal version also draws from the Tocqueville and the idea of a minimalist state. Civil society refers to all forms of associational life that is not controlled by the state and is also free from the whims of the market but also exists to ensure that both the state and the market are accountable and responsive to the needs of the citizens (Ncube 2010). Thus it is the third sector after the state and the market. In contrast to the state, the sector is endowed with the comparative advantages of efficiency, flexibility, innovation, cost effectiveness in service delivery and in politics it is a vehicle of action and citizen participation. The post-modern conceptions of civil society today are understood as an arena where social movements and civic organisations from all classes attempt to constitute themselves in an ensemble of arrangements so that they can express themselves and advance their interests.

Civil society organisations have today also acquired a new prominence as international actors. By virtue of their link to citizens and due to their increasingly global nature of their networks, civil society organisations can now claim to give a voice to international public opinion. Their unique positions make them indispensable partners in multilateral initiatives and are able to a certain limited extent, to contribute to overcome the democratic deficit of



global governance. Civil society plays a key role in democracy promotion through the affirmation of human rights and keeps the political system under pressure of accountability. Civil society organisations are contributing to the global dialogue on key issues and this dialogue is shaping a global public sphere in order to forge common answers to global problems (de Vasconcelos 2011).

Civil society is conceived as a zone where citizens exercise their right to civil liberties free from state dominance (Steyn 2008). It is a vehicle for empowering citizens and a space for consensus seeking. Success in creating spaces for negotiated development requires capable and accountable governments as well as active citizens. Helliker (2012) argues that most of the literature focuses primarily on relations between civil society and the state such that the term civil society is deployed instrumentally in a state centric fashion as a force in democratizing the authoritarian and often neo patrimonial African state. The role of civil society in the context of state driven and sanctioned authoritarianism therefore is to build a modernizing democratic state. Accordingly in the later period of the democratic consolidation, there are said to be potential synergies between the state and civil society, with the latter seeking to engage the state in a constructive manner and in doing so contributing to the building of national democratic institutions and organizational capacity for development (Helliker 2012). Therefore, civil society is considered crucial for the prevention of a return to authoritarian rule especially once the process of democratic consolidation is already underway. However, such claims tend to be normative and prescriptive in nature and thus the civil society is eulogized as the ultimate medicinal compound capable of curing all the ills.

Through the civil society, the poor and vulnerable can be empowered by having their demands and knowledge represented, by increasing their capacity to comprehend their context and influence decisions that affect their lives and by challenging the status quo. A more egalitarian distribution of political power leads to more resources and opportunities for the poor. By being able to engage in decision making processes, define policies and improve services not only reduces poverty and improves social justice but also ensures that people live a life of dignity. Considering the lack of opportunities, skills and isolation in which many poor and vulnerable people live, civil society organisations should play an important role in defending their interest in the negotiated development process with other

often more powerful actors. Civil society has a role to promote good governance by limiting and controlling the power of the state. They also have a duty to protect citizens against excesses by the state by creating a buffer against possible state predatory behaviour as well as monitoring public performance, human rights abuses and corruption. One must also be quick to acknowledge that civil society is a theoretical concept rather than an empirical one in as much as the state and political society. It is a synthetic conceptual construct that is not necessarily embodied in a single, identifiable structure (Bratton 1994).

Several scholars have questioned the universality of the application of the concept of civil society as an analytical construct to understand democratization and as a policy tool in non-western contexts given its history and evolution. The most important question relates to the extent to which the concept can travel and still retain its utility free from distortions associated with conceptual stretching (Magure 2009). In respect as to whether the idea of civil society is relevant to Africa and other third world context, there are four possible answers according to Lewis (2002). The first is an emphatic yes and is based on the universal necessity for a political project geared towards building and strengthening democracy. The second is a clear no, primarily because the concept emerged from a western tradition characterized by different political and cultural settings thereby making it one of the many misguided policy transfers from the west. The third answer argues that civil society is relevant only if adapted to the unique local conditions hence the need to take the middle of the road approach to its use. Such an approach accepts the utility of civil society within reasonable and average limits and is not extreme in nature. The fourth and final argument is based on the premise that the question is irrelevant because civil society has been part of the third world countries' colonial histories of both domination and resistance, thus the relevance of the concept is self-evident.

In the light of the above, it is clear that the concept of civil society is of universal relevance and therefore cannot just be discarded altogether primarily because it originates from the west. It is worth noting that the many principles governing civil society as seen and understood in western eyes and terms are not yet fully evident and developed in the African settings (Magure 2009). To insist that civil society produce democratic transitions, optimists fail to distinguish conjectural and structural phenomena, thereby setting very high expectations for African civil society (Magure 2009). Instead one can argue that scholars

need to focus on collective activity and norms whether they are democratic or not that make up the actual existing civil society in Africa. Such an approach claims that African societies are inherently undemocratic and less likely to support liberal democracy.

Therefore, regardless of the contested nature of the term, civil society is now part and parcel of the political and social discourse of a wide range of groups and individuals in African and beyond.

It is also important to note that civil society today performs a critical role in delivering services to where there is a governance gap be it nationally or internationally. Civil society organisations owe their legitimacy to their activities. If their activities benefit the groups for whose good they work, they will be respected. Therefore their authority is derived from their actions.

#### **2.4 Civil Society in Africa**

Civil society has become a popular concept in both the analysis of the social bases of the recent political changes in Africa and in external policy support for processes of liberal democratic political reform. Civil society is portrayed as the driving force behind and guarantee of democratization and the containment of the state (Allen 1997). Civil society is also closely associated with the analysis of the African struggles for democratisation. Thus the current development paradigm in Africa predominantly concerns bringing to the fore civil society into a closer relationship with the states. Partnership between civil society and the state is now at the centre of the donor fronted new agenda for development assistance. Central to this agenda is the framework where civil society organisations are expected to work in partnership with participatory and accountable governments as the only means of ensuring and sustaining participatory, equitable and sustainable development (Hearn 2001).

Manifestations of civil society in Africa can be traced back to the pre-colonial era. African traditional systems in pre-colonial times recognized the role of popular participation in decision making and governance. Some African societies can be argued to have had consensual political systems which required major decisions to be made only after widespread consultations among the people (Makumbe 1998). However, in most parts, traditional rulers were born rather than elected thus civil society then did not need to be as actively involved in the choice of leaders as the situation in the democratic governance

system as currently defined. Thus the pre-colonial African political system did not include or support civil society as currently defined in modern world. Bratton (1989) also argues that while many pre-colonial cultures in Africa may have lacked states, they certainly did not lack civil societies in the broad sense of the bevy of institutions for protecting collective interests. In most parts of Africa, the rural folk continue to grant allegiance to traditional institutions. It is upon such traditional institutions that Africans invented forms of voluntary associations during the colonial period as a response to the disruptive impacts of urbanisation and commercialisation.

Sometimes some of these organisations were updated expressions of long standing informal solidarities such as ethnic welfare associations, prophetic movements, agricultural work parties and in some cases they gave collective shape to new occupational and class identities e.g. peasant movements, labour unions and professional associations. Many of these voluntary organisations became explicitly political by giving voice, first to protest at the indignities of colonial rule and later calling for independence (Bratton 1989). They were thus indeed the building blocks for the nationalist political parties that would arise later. One might have therefore expected a perpetuation of a trend towards institutional pluralism in the rash to modernisation in the early colonial period. However the new African political elite gave top priority to state sovereignty and national security. They chose to invest scarce power resources in the construction of one party or military regimes. Yet even centralised regimes were not universally successful at discouraging autonomous organisations from taking root within civil society.

The colonial governments throughout Africa destroyed most of the civic groups that existed prior to the advent of colonization. Such groups were viewed suspiciously by the colonial governments who feared that they could become instrumental in mobilizing against colonial rule. Furthermore, colonial governments actively discouraged the formation of civil societies which could have participated in the political process in their countries (Makumbe 1998). The only civic groups that were allowed to operate and take part in the political processes during the colonial era were those whose membership comprised of the settlers or colonialists themselves. Africans were restricted into creating seemingly apolitical organisations such as burial societies. It was only through the passage of time that these burial societies became the fora for the expression for political demands. It is mostly

through such initiatives that the political parties that fought for independence were born. Civil society was instrumental in partnering with the liberation forces to liberate Africa into independence.

The fact that the contemporary African state is not a product of indigenous society should not be taken to mean that African political is an institution-less arena. Forms of associational life have evolved in rural Africa that addresses the direct needs of peasant producers for survival, accumulation and reproduction under harsh and unpredictable conditions. Traditional social relations were rooted in the moral expectation that members will support one another in times of need. Thus the invisible organisations in this network of mutual obligation may be difficult to discern to the untrained eye because they are ad-hoc and informal rather than regular and formalised. Public morality in Africa is derived from particularistic values of the economy of affection rather than from the universalistic values embodied in constitutional law and rational bureaucracy (Bratton 1989).

Post-independence Africa witnessed a widespread drive towards one party state as the new governments argued that the concept of multi-party democracy was alien and meant to divide the people. Most civil society organisations were 'consumed' by the governments and they lost relevance as they become part and parcel of the ruling parties. The disintegration of socialism seems to have triggered a widespread civil unrest in Africa. Both the civil society and opposition parties challenged the ruling elites in the mostly one party states and military regimes forcing them to accede to some form of democratization of the political systems (Makumbe 1998). Transitions away from one party state and military regimes started with political protests and evolved through liberal reforms and culminated in competitive elections and often ended up with the installation of new forms of regimes. Although all this was not unfolding uniformly in the continent, these movements and institutional arrangements appear to be evident in almost all African countries. Such major changes could not have been occurring without an active and dynamic civil society.

According to Makumbe (1998), critics of civil society in Africa who claim that Africa has no meaningful civil society, fail to recognize and realize that unlike in developed countries, Africa has faced several obstacles to the development of its civil society since the advent of colonialism. The colonisers made efforts to ensure that no civil society groups could emerge

in their colonies and in post-independence, the new governments' discouraged civil societies by practicing the one party state system of governance. Thus a lot of time has been lost to develop civil society. African civil society has existed in very difficult circumstances and just when one thought they had found their foot, they remain mired in deep problems that affect their standing.

The fact that there exists in Africa today some organized groups of citizens that undertake various non-state activities including exerting pressure on the state and the ruling elites for positive socio-economic and political changes is enough evidence to show that there exists civil society in African today. African civil society is however fairly weak and is beset by a plethora of constraints such as financial, organizational, operational and even environmental in nature (Makumbe 1998). These constraints make it difficult for civil society in Africa to effectively represent, promote and protect the interests of the people. Some of the constraints have been degenerated by Africa's history while others are a direct result of the continent's social, cultural and political condition. Although resolving these problems could take considerable time and resources, the task facing African civil society is not insurmountable.

The attempt over the past decade to provide a programme to secure democracy particularly in Africa has of late come to depend quite substantially on civil society. Kasfir (1998b) has gone further to argue that the importance of civil society organisations in creating and sustaining democracy in Africa has been greatly overstated. Therefore, even after the initiation of democracy in Africa, there is much less confidence that African states are becoming democracies. With a few exceptions, those states that initiated transitions and even those that replaced their rulers with an election have entered an uncertain limbo in which their regimes reflect a contradictory combination of characteristics of democracy, authoritarianism and inherited practices of neo-patrimonialism (Kasfir 1998b). He argues that scholars have idealized the Western practices from which they borrow the notion and have overlooked the defects in the African context especially on its inequalities to access, difficulties in responding to problems of collective action and the general lack of finance (Kasfir 1998b). To him, a broader strategy of governance that takes into account both the building of civil society and assisting political institutions is more likely to contribute to

democracy and good governance. The nature and strength of Africa's fledging civil societies will also help to determine the prospects for democratic consolidation.

Proponents of the liberal ideology of civil society in Africa argue that the starting position in strengthening civil society is to increase participation in both the members active within them and the number of associations or organisations. The assumption is that because civil society plays an important role in enriching Western democracies, it would have the same effect on Africa. This is a much idealised view and facts on the ground shows that participation in the Western democracies has been decreasing. However, it should be taken that the concept of civil society needs an adaptive view. This suggests that while the concept is potentially relevant to non-western societies, it will take on local different meanings and should not therefore be applied too rigidly either at the level of analysis or in the implementation of policy and should not be deployed instrumentally in search of predictable policy outcomes (Lewis 2002).

Furthermore, Makumbe (1998) has argued that the historic dynamic nature through which civil society in Africa developed and the neo-patrimonial political environment within which they operate combine to render civil society fairly weak and beset with constraints of a financial, organizational and operational nature. As a consequence, African civil society will continue to need material, financial and moral support from western donors. The question of civil society's independence from donor influence is therefore crucial in analyzing the structural set up of civil society. African civil society tends to replicate the neo-patrimonial and authoritarian tendencies of the state in both its organizational structures and operations (Ncube 2010).

Associational life in Africa took different forms in different countries. However, in almost everywhere, it provided ordinary people with an outlet for the political urge to combine in pursuit of shared goals. It must also be noted that the political space for civil society in Africa is shrinking. Okumu (2011) noted that in 2011 two thirds of the African states adopted or passed a legislation that reduces the space for civil society organisations especially those that are politically active or receive international support. Some African states are increasingly looking to the east for inspiration on how to jumpstart development

and economic growth. In such a development model the role of civil society is curtailed rather than promoted.

## **2.5 Civil Society in Zimbabwe**

Zimbabwe has a large, diverse and active civic community ranging from residents associations, student groups to think tanks and trade unions. Critical watchdog's functions performed by civil society organisations in the democratic governance arena include election monitoring, political violence monitoring, corruption monitoring and tracking public opinion. To a large extent, Zimbabwe's civil society is as much constructed by that discourse as it is self-invented, and its invention may have been by means and for ends rather than those implied in mainstream civil society discourse. Its intervention and construction has come through a history of struggles for and over politics, class struggle and the day to day material contingencies of survival as much as identity, freedom and verities of liberal and libertarian thought often associated with theories of civil society (Moore 2006). However, civil society in Zimbabwe suffers from the general weaknesses common in the sector across Africa as well as specific shortcomings that arise from the Zimbabwean crisis.

Development of civil society in Zimbabwe mirrors that of other African countries. Moyo (1993) has argued that civil society in Zimbabwe is in a state of chronic underdevelopment that he approximates to social paralysis. This can be attributed to historical factors of pre-independence and post-independence. However, it should be noted that in the late 1990s, Zimbabwe seem to have had a vibrant civil society. Civil society in Zimbabwe is struggling to define itself within the confines of the sense of the concept of civil society as universally accepted mainly because it has and is struggling to establish free associations that were not under the tutelage of the state and more recently from the opposition political parties and donors.

During the pre-independence period, as has been noted on the civil society in Africa, the essence of the British colonial policies after the occupation of the country in 1890 and the days of the Unilateral Declaration of Independence (UDI) in 1965 were to criminalise the politics of the black community. Thus without political activity the prospects of civil society were diminished. For the black community, political activity became a clandestine affair as they were forced to organize and coordinate behind closed doors under life threatening



conditions (Moyo 1993). The British settlers' attempts to monopolise politics resulted in an underdeveloped civil society in Zimbabwe. During this period, social movements such as trade unions, student groups, community organisations and political parties in the black community were trampled upon and viciously dealt with in an attempt to relegate them to permanent irrelevance. Colonial authorities frustrated the development of civil society in Zimbabwe by seeking to remove the black community from mainstream politics and confining them to the realm of tribal existence where they would be natives and define themselves in ethnic terms as opposed to national identities (Moyo 1993). There was a belief among the colonisers that blacks were better governed as tribal entities and this belief dominated the settler government thinking during the colonial period. The result was that the development of civil society among the black majority was severely undermined.

According to Raftopoulos (2000), the growth of nationalist political party organizations between the early 1950s and the end of the colonial period in 1980 provided Africans with a broad civic forum in which to organize, to develop some form of political accountability, and to engage in the protracted, uneven and still unfinished process of constituting a national identity. The experience of nationalist organizations was both inclusive and subordinating in that, although the nationalist movement provided a broad framework for political organisation, it constrained the autonomous growth of various organizational structures in the name of a unified, more centrally controlled national structure (Raftopoulos 2000).

Moyo's (1993) views on how the colonial governments criminalised the politics in African communities and the mode of colonial rule which restricted blacks to the realm of tribal existence where they would define themselves ethnically as opposed to national identity has been strengthened by the work of Mamdani (1996). Mamdani (1996) has explained the weakness of African civil society through the bifurcated nature of the colonial state that developed two forms of power under a single hegemonic authority. Thus while urban power spoke the language of civil society and civil rights, the rural power under customary authority was concerned with enforcing traditions on the community.

The post-independence period was characterised by a government which, although it had a fairly broad basis for legitimacy founded on the legacy of the liberation struggle and a general developmentalist socialist programme faced the task of establishing its dominion in

the state and in parts of the country where its support was weak (Raftopoulos 2000). Therefore its rule was characterised by popular consent and a distinctive coercion to enforce unity and compliance. This therefore meant the establishment of political structures that marginalised dissenting voices.

The attainment of independence in 1980 after a protracted war gave hope to Zimbabweans that there would be a complete turnaround from the colonial and UDI attitudes towards politics. They hoped to regain all the lost liberties that they had been deprived of for close to a hundred years of colonial rule. This proved not to be, instead the ruling Zimbabwe African National Union – Patriotic Front (ZANU PF) took maximum advantage of an underdeveloped civil society by claiming that ZANU PF was the sole representative of the people. The party declared itself to be the umbrella organisation of all social movements and went about destroying civil society organisations in the name of the revolution (Moyo 1993). Organisations were challenged to join the ruling party as a way to prove their revolutionary and patriotic commitment.

In 1981 ZANU PF declared the year as the year of the consolidation of the people's power which according to President Mugabe impelled the ruling party to adopt a more comprehensive and a more generous view of government embracing all these forces. The need for such a comprehensive view of government was interpreted by the ruling party to mean a one party state. The nation was told that the new country demanded people either as individuals or groups, a single loyalty that is proper and a manifestation of the national unity and spirit of reconciliation. The single loyalty meant loyalty to the ruling party. Social groups that tried to resist the tactic of exclusion by inclusion under the guise of one state, one society, one nation and one leader were branded sell outs and enemies of the state/nation (Moyo 1993).

Civil society organisations that had operated clandestinely and underground during the colonial period and had hoped to gain legitimacy after independence were left decimated by the ruling party tactics. Some bled to death as they failed to find any political space for independent policies and opinions arising from self-management and self-organisation without the watchful eye of the state. Those that survived found themselves having to join

and toe the ruling party line. As a result civil society remained weak in lobbying for strategic policy changes.

Kagoro (2003) argued that the public arena in Zimbabwe during the 1980s was dominated by state security concerns. At the time the country was faced with real threats from the apartheid regime in South Africa, insurgency groups in Matabeleland and Midlands provinces and the Renamo bandits along the border with Mozambique. The exigencies of state security were used as a guise for liquidating all forms of dissent and keeping a tight rein on the emergence of independent associational life. Moore (2006) has also argued that the 1980s can be viewed as an era in which the post-independence civil society began to emerge amidst the ZANU PF government's countervailing efforts to create a one party state along the lines of nationalism and Marxist-Leninism. In spite of the fact that 'nationalism' had won the state, a civil society would emerge that was almost inseparable from the state just as it was during the struggle. Thus civil and political societies were barely distinguishable during this period although much of civil society did indeed end up battling politically for a state which in allowing for more political plurality would also create the space for autonomous organisations that would not be seen by the state as an autonomous threat to its power (Moore 2006).

However, it is equally important to note that during this period there was an equally organized women's movement. The women's movement was engaged in very successful advocacy especially around inheritance laws and the issues of women's human rights. The women's movement questioned the extensive exclusion of women from structures and processes of governance. Thus the women's movement's unique contribution to the politics of nascent civil society in the post-colonial state was the notion of social exclusion as an expression of limited citizenship, misrecognition and dehumanization (Kagoro 2003).

In 1990 the state responded to the global events by abandoning the majoritarian, developmentalist rhetoric and adopted the International Monetary Fund (IMF) and World Bank (WB) prescriptions for the economic structural adjustment programme (ESAP). This prescribed among other things the downsizing of the state, removal of subsidies in social services, deregulation of financial services and the privatisation of state owned enterprises. Aid became tied to questions of governance and political liberalisation. Therefore the

emergence of pro-democracy movements in the post 1990s was linked in part to the contextual changes in the global political economy as well as explicit donor interventions.

On one hand ESAP had authored the very conditions of impoverishment and social exclusion that have made governance a topical issue in Zimbabwe today whilst on the other hand it brought in the political and economic liberalisation around which the post 1990 civil struggles have and continue to be waged. The civil society critique of the economic conditions authored by ESAP was linked to the greater democratisation in the form and discourse of constitutionalism (Kagoro 2003). The popularity of the constitutional discourse was demonstrated by the emergence of the NCA, a discourse that has for most part been conducted within the terrain of liberal human and civic rights. The NCA succeeded in forging a broad alliance to advocate for a new home grown constitution.

The 1990s saw the proliferation of civil society organisations in Zimbabwe and this is mainly due to the deregulation of the economy. The deregulation of the economy saw the introduction of the structural economic adjustment programmes in which a lot of social services that the people had been accustomed to were removed. Civil societies appear to fill the gap that had been left by the state's removal of the social services. There was a rise of discontent by the populace in the country on the economic direction the country was taking and civil society seems to capture the moment especially the trade unions.

However, civil society in Zimbabwe seems to be facing a quagmire with the problems of financing and agenda setting. Civil society organisations in Zimbabwe are creatures of the international community which provides much of the funding. This problem exists on two fronts, domestically and internationally (Sachikonye 2011). Domestically, civil society organisations need to free itself from the opposition politics and internationally, they need to be less dependent on international donors if they are to enjoy meaningful autonomy in crafting its own agenda (Sachikonye 2011).

The other problem with civil society organisations in Zimbabwe is that it is not anchored in its domestic constituencies. Therefore the struggle for democratization should be conceived on two levels, within the civil society organisations and the struggle to democratize the state and national politics. Carrying out the later task presents another challenge of organizing and participating as a collective. Civil society in Zimbabwe has a high oversensitivity to

organizational tuff and the need to protect the autonomy. Such an organizational psychology militates against effective and sustained collaboration among civil society organisations.

Civil society organisations in Zimbabwe have also suffered as a result of the Zimbabwean crisis with the exodus of skilled personnel. Civil society played a crucial part in the formation of the opposition Movement for Democratic Change (MDC) in the late 1990s and this has created problem for them. This proved to be a moral quandary on whether civic leaders should assume a political role by holding political office (Kagoro 2003). The state had to use this to discredit the entire civil society as partisan and politically biased and actuated by self-interest.

The sector finds itself highly politicized today and rather than playing a non-partisan mediating role, some strategically located civil society organisations find it necessary to pronounce on whether the various contesting political parties deserve the sector support. Because of its perceived association with the opposition parties in the last decade, civil society organisations have attracted undue attention from the state. The state has enacted the Private Voluntary Organisations Act that governs the sector and gives the state considerable discretion over their registration, finances and operations. The relationship between the state and civil society organisations has been a terrain of political struggle, with the state stepping up surveillance and threats especially against organisations engaged in governance and human rights work.

The relationship between the state and civil society has metamorphosed and oscillated over time. Civil society organisations were embedded in the ZANU PF one party state mantra in the 1980s, played midwife to the birth of opposition politics of the MDC in the late 1990s, sought an influential autonomous role in the transitional government of 2008 and have retreated shell shocked on the outcome of the 2013 general elections without a clear agenda on how to move forward. The installation of the Global Political Agreement (GPA) after the 2008 elections created serious divisions within the civil society. Emblematic in the rift was the constitutional making process with key organisations such as the NCA, Zimbabwe Congress of Trade Unions (ZCTU) and the Zimbabwe National Students Union (ZINASU) vehemently opposed to the leading role of parliament where they argued that the

process was not people driven. Other organisations recognized that constitutional reform requires political power and technical expertise and participated in the process.

Zimbabwean civil society in the late 1990s became so robust that in 2000 together with the fledgling opposition MDC successfully campaigned for a no vote in the government authored daft constitution referendum. This was probably their highest water mark and maybe the most resounding victory in its history. Soon after the referendum in which the ZANU PF party and government was hugely embarrassed, the party-state which had been in a reactive mood woke up, sharpened and displayed its fangs (Sachikonye 2011) and used them in a multi-frontal attack on the opposition, media and civil society.

State-civil society relations degenerated into deep polarization and conflict and a protracted struggle for space (Sachikonye 2011). The state reengaged its hegemonic gear and with vengeance. The state became an angry state in defense of an angry regime and an angry ruling party and governing by anger became the modus operandi and a form of governance. The 2008 election were held under this set up and this laid the contextual frame work for the Southern African Development Community (SADC) initiated inter-party dialogue that culminated in the power sharing transitional deal.

The Zimbabwean civil society blossomed during the crisis ridden decade with a number of governance and human rights organisations flourishing. However, Sachikonye notes with regret that a distinctive feature of civil society organisations at the turn of the millennium was that in the aftermath of the triumphant defeat of the government's draft constitution, virtually all the organisations harbored visions of short, sharp and decisive victory over the state and the ushering of a new post authoritarian era. As history now records, this turned out to be an illusion and more critically the civil society organisations were slow to adjust and reorient to the new reality of a vicious but insecure state determined to secure and prolong its hold at the apex of power. Civic society thus clearly underestimated the regime's quest and appetite for retaining power. Therefore the civil society failed to read the situation and adjust their programmes and strategies appropriately.

One of the salutary contributions of the Zimbabwean civil society in the Zimbabwe imbroglio was the ability to keep the flame of democracy burning. They were able to keep the Zimbabwean crisis and the issue of democratization alive domestically, regionally and

internationally even in the face of hardened authoritarian and dictatorial regime. It must be noted that the enactment of the GPA and the establishment of the coalition government meant a new phase in the struggle for democracy had dawned upon the country and this demanded a new radical adjustment. Regrettably several civil society organisations did not recognize that the new realities offered a new structure of opportunities under changed circumstances.

Critically, most civil organisations partnered the opposition MDC and in terms of the coalition government of 2008, the MDC Formations went into government. Thus, whatever the justification, civil society was not supposed to continue being cosy with the MDC given the watchdog role civil society has to play. The elections in March to end the coalition government this year saw the MDC being trounced by ZANU PF and this has complicated the matter for the civil society organisation as some openly campaigned for the MDC and thus ZANU PF does not hold them as legitimate representatives of the people who plays a watchdog role but an appendage of the opposition.

It is important to note that by the standards of other African countries except South Africa, Zimbabwe has a robust civil society. Its development, however, has been shaped by the state policies of cooptation in the early years of independence to being vocal during the height of the Zimbabwean crisis. It is a heterogeneous community spread across a spectrum of humanitarian charities, community based organisations, to development non-governmental organisations and governance oriented civil society organisations. Despite operating under a lot of duress, they have of late been speaking candidly and have been boldly vocal in speaking the truth to the powers that be by challenging the monolithic and hardening authoritarian order of the government regime.

## **2.6 Conclusion: Civil society in Zimbabwe post 2005**

Civil society gained international reputation due to the escalation of the Zimbabwean crisis. They became the ears and eyes of the international community and were regarded as more objective. They also brought new perspectives with so much experience in matters affecting the country for example grassroots development and human rights. They seem to have a strong knowledge base and a strong commitment to issues affecting the country as well as issues relevant to the emancipation of the country. They have also shown more sensitivity

and understanding of Africa's severe economic and political crisis than their respective governments. NGOs and civil society have recommended an action oriented compact for Africa's development which must be translated into coordinated programmes for short term solution thus keeping in mind that the people at the grassroots level must take lead in their needs and formulating development strategies.

NGOs and civil societies have demonstrated an awareness of the fact that conventional development models have not changed the situation of the poor and have been quick to recognise that people are poor because they have no power. Political environment fraught with repressive legislation, violence and replete with intimidation and polarisation has made it very difficult for civil society to operate. Due to their strong interest in local development processes and their ability to connect local processes in national and global processes, NGOs and civil society if incorporated in policy making processes, they can contribute to the internalisation and localisation of international development goals. They have the capacity to contextualise international goals and develop them more so as to make them appropriate on the national and local levels. They connect the global with the local.



## **CHAPTER 3: CASE STUDY: THE NATIONAL CONSTITUTIONAL ASSEMBLY (NCA)**

### **3.1 Introduction**

This chapter discusses the case study of the research, the NCA by looking into the history of constitutionalism in Zimbabwe and fitting into history how the NCA came into existence. As mentioned earlier, in Zimbabwe, state driven development had failed hence the emergence of other non-state actors as part of the salvation. There is also the problematic issue of what is the prerequisite for development. It has been argued that an essential prerequisite is constitutionalism and the rule of law and that once a country can attain those two then there will be economic development as well as the deep entrenchment of democracy and good governance. Zimbabwe's political development or regression since 1980 has been centred on attempts or lack of to resolve the unfinished business of the Lancaster House constitution. The governance crisis is largely due to the Lancaster House constitution (Kagoro 2004).

Constitutions are now seen as tools for bridge-building amongst and between civil society and the state (Sachikonye 2011). Thus in order to develop African political cultures grounded in human rights and social justice, an organic link is needed between the constitution as a rule of law instrument primarily concerned with restraining government excesses and protecting ordinary citizens and the constitution as a legitimization of power structures and relations based on a broad social consensus with a diverse society. The task is to move away from old constitutionality that overemphasised law and state power towards new constitutionalism that has more relevance to the needs of citizens and ultimately owned by them. Constitutionalism is therefore the mirror reflecting the national soul, the ideals and aspirations of a nation, the articulation of values bonding its people and disciplining its government. Thus a thorough and inclusive process of constitutional reform has the potential to remedy Zimbabwe's governance crisis.

The most important legal instrument in the scheme of good governance is the national constitution. A major part of the answer to economic development and good governance lies in the development of constitutions that can stand the test of time and that deliberately

structure national institutions engaged in the management of the country in such a way as to ensure that a capable state is ensured. The future of democracy is predicated on the development of viable constitutional arrangements that set up viable institutions within which to conduct the business of good governance and which foster an environment where peace and development can flourish. Such an arrangement will ensure that the exercise of government authority is exercised in a predictable, responsible and legally regulated way to the satisfaction of civil society. It should however be noted that it is not for outsiders to meddle in the constitutional development process or tell what should be in the constitution. The people must decide their own constitution because there is a well-founded suspicion especially with the history of colonialism of anything smacking of superior wisdom from outside.

Economic recovery and development must begin with a recuperation of those values that are acknowledged as the foundations for human society (Mdulo 2001). These values are in turn the foundation of social creativity and democratic governance. Thus there is need to establish stable political and constitutional orders that promote development and aid in the conquest of poverty, hunger, disease and ignorance while also guaranteeing citizens rule of law and equal protection regardless of sex, colour or ethnic origin. The aim should be to achieve a constitutional order that is legitimate, credible and enduring and which is structurally accessible to the people without compromising the integrity and effectiveness of the process of governance. Constitutional democracy will inevitably involve multiple or concurrent constitutional orders than a single centre of authority and power. A constitution is thus not an act of government but of a people constituting a government and a government without a constitution is power without a right (Mdulo 2001). A constitution is a thing antecedent to a government and a government is only the creature of a constitution. It is a basic structure of any organised society.

Some scholars have criticised the move towards written constitutions and the current constitutional arrangements on the grounds that they are based on western models of governance rather than on African ideals of governance. They have gone further to question the relevance of western models to the African conditions. However, while transplanting western models into Africa might be problematic, the motives of some of those who advocate for African solutions to Africa's problems may sometimes be suspect. Indeed most

dictators and advocates of one party state system of governance justified themselves on the grounds that they were a variant of democracy best suited to the peculiar African circumstances and a natural facilitator of economic growth and promoter of national unity. It only became clear later that these justifications had little to do with the African concepts of governance but more to do with consolidation of power through the elimination of political opposition.

A serious search for viable constitutional arrangements must begin with a frank identification and examination of the specific social, political and economic conditions of the present (Mdulo 2001). It must be noted that a constitution affects the lives of all citizens and therefore must address the concerns of all citizens regardless of ethnicity, gender or station in life. A constitution of a nation is therefore not just a statute that mechanically defines the structures of government between the governors and the governed but should be a mirror reflecting the national soul, the identification of the ideals and aspirations of a nation and an articulation of the values binding its people and disciplining its government. It is an autobiography of a nation. It should reflect the lives of all the people. The people must have a sense of ownership of the document and must be able to see themselves and their history before they can respect and obey it. Thus constitutions that do not address the real issues or causes of discontent are sure to generate legitimate crisis.

Beyond the essential ingredients of a democracy, good governance and development, constitutions should be seen as a liberating document that not only limits the powers of the state and its institutions but also guarantees the kinds of liberties and freedoms that will be able to make the pursuit of happiness and self-fulfilment a reality for the people. It should guarantee an equal opportunity for all citizens irrespective of gender, race, religion or ethnicity. Equal opportunity for all is a mark for true liberation because it ensures that the benefits of economic development accrue to many people and not just a few and that all citizens have a chance to live up to their potential and achieve self-fulfilment.

### **3.2 History of Constitutionalism in Zimbabwe**

According to Sachikonye (2011), Zimbabwe has a chequered history in constitution making. The Lancaster House constitution was negotiated under duress. Presided over by Britain, the constitution reflected the balance of forces involved in the independence negotiations as

well as the power balance within the southern African region at that particular juncture (Sachikonye 2011). As a compromise document, the Lancaster House constitution pervaded the process and structures through which the new state sought to consolidate national independence and provide the basis for economic and social development. Mandaza (1986) has noted that the conduct of the Lancaster House conference itself, the various concessions made by the liberation forces leaders all tended to reflect a result less than that which might have been expected of a national liberation movement had it won an outright victory in the battlefield.

Zimbabwe's political and constitutional history is largely textured by the form which nationalism and the liberation struggle took from the 1960s to the 1970s. The convectional nationalist movement that arose in the 1950s and early 1960s was confronted by an obdurate white minority regime that refused to concede independence to the majority. The settler regime as argued earlier used repressive means to contain African nationalism. The nationalist movement then mutated into a liberation movement that grew in strength and spread its tentacles, subsequently forcing the minority regime to the negotiating table (Sachikonye 2004). Post-independence analyses on the political developments in Zimbabwe should never underestimate the role in which violence and coercion played in the colonial regime strategies to block independence as well as in the nationalist movement politics themselves. The use of detention, torture and killings was perpetrated by the colonial regime and the nationalist movements also utilised violence and intimidation in mobilising supporters for support.

Zimbabwe adopted a constitution in 1979 that was a product of negotiations to end the liberation struggle. The nationalist movement that 'supposedly' represented the people was not elected by the people. Their legitimacy was drawn from their active prosecution of the armed liberation struggle. The 1979 constitution bore resemblance to most independent constitutions that were the outcome of an agreement between the colonial power and the representatives of the colonised people. Nevertheless, the Lancaster House constitution was premised on the recognition of the liberal norms of constitutionalism (Sachikonye 2004). It incorporated the concepts of separation of powers, independence of the judiciary, and supremacy of the legislature over the executive, public service neutrality and government accountability. The constitution thus sought to place extensive limitations on the powers of

the government. A provision in the constitution stipulated that the constitution should not be changed substantially for the next ten years so as to ensure that the transition after independence would not entail a substantial shift in social and property relations. The clause would only later have far reaching consequences on the realm of land rights.

The Lancaster House constitution was no more than a compromise between competing interests. There was a terrible absence of wider and popular participation in its making and this robbed it of a broader legitimacy among the generality of Zimbabweans. Mdulo (2010) has noted that the Lancaster house constitution failed to create potential for the necessary institutional change not only on the institutions in the political realm but also in the institutions that govern the way the economy functions. It therefore failed to serve as a framework for local political and economic actors to negotiate the transformation from a colonial state with great economic disparities to a more equitable Zimbabwe.

The Lancaster House agreement was also a compromise between the transfer of political power to blacks and the entrenchment of the economic privileges of the white settlers and international capital (Kagoro 2003). Thus the agreement toned down most of the more radical preferences of the socialist oriented liberation movements of an independent Zimbabwe. Raftopoulos (2004) argues that the Lancaster house constitution gave the settler capital a decade long period of consolidation during which issues around radical restructuring of the legacy of economic inequality were effectively put on hold. During the negotiations the land issue proved to be a contentious point. One of the nationalist leaders, Joshua Nkomo stated that, “we knew that vast acreage were lying idle and therefore without market price in areas formerly reserved for white ownership. To buy areas adequate for resettling the many land hungry African farmers who had been confined to the former tribal trust lands, would be beyond the financial ability of the new state” (Nkomo 1984). Thus the new constitution constrained the capacity of those who had been disposed of their land to claim it. The Lancaster House constitution was therefore determined by a series of national, regional and international economic forces that established the contours of the compromise that necessitated the policy of reconciliation announced by president Robert Mugabe in 1980 (Raftopoulos 2004).

The Lancaster House constitution was expected not to have its significant provisions amended for 10 years. According to Sachikonye (2011), it was therefore surprising that from 1990 (the date of expiry of the stricture) to 1998 there was no urgent attempt to review the constitution and institute reform despite many burning issues relating to democracy, land reform and social rights. Instead the executive introduced some constitutional amendments that premised on centralisation and consolidation of power and authority. Thus the absence of urgency in constitutional reform can be partly explained in that the president was a major beneficiary of the amendments especially the one made in 1987. The 1987 amendments created the position of an executive president which vested near absolute powers in the president especially in critical areas of the constitutional and political process thereby creating a presidential monarch.

According to Sachikonye (2004), while the Lancaster House constitution served an important purpose of transferring power from the minority settler regime to a majority government, it was not necessarily a good foundation for good governance. It would only later be described as outdated, imposed and transitional instrument that does not represent the wishes and aspirations of the people for good governance and development (Hlatshwayo 1998, in Sachikonye 2004). To compound the problem, the post-independence government did not prove to be an ardent reformer in terms of democratisation. It has been argued that while majority rule was for the first time extended voting rights and participation in the electoral process to all people, democratic values of tolerance and respect for the rule of law was not strictly observed by the government (Sachikonye 2004). The emphasis of the post independent Zimbabwe became that of consolidation of power over every layer of society and decent was crushed ruthlessly.

Ndlovu-Gatsheni (2009) has argued that any serious analysis of the roots of the crisis of the national democratic revolution in Zimbabwe must be traced back to the Lancaster house settlement because the settlement was directly responsible for compromising a 'revolutionary transition' under which the racially biased inequalities in land and asset distribution could have been resolved. Zimbabwe was thus born with what Amanda Hammar and Brian Raftopoulos has termed the "unfinished business" (Hammar, Raftopoulos and Jensen 2003).

In 1987 the government introduced the Constitution of Zimbabwe Amendment Act No 7. This introduced an executive president with an unlimited term of office and President Mugabe became the first incumbent with omnipotent powers typically given to executive presidents in a one party state (Kagoro 2004). This constitutional amendment shifted power significantly towards the executive marginalising the legislature and the judiciary. Furthermore in 1992 the government under pressure from the labour unions that were calling for strikes passed a Labour Relations Amendment Bill that was meant to pre-empt mass protests by labour at the imposition of the economic structural adjustment programme. Labour was incensed and called for street demonstrations that were heavily suppressed by the police. It was in this context of severely proscribed civic and political space that a blistering critique of the government and ruling party emerged.

Matinenga (2013) also notes that Zimbabwe like many other countries in the region soon amended the independence constitution and unfortunately not for the better but for the worse. There was a general shift to monolithic executive government chaired by an equally all powerful president. Thus the emphasis of governance shifted from the people to nation or sovereign rights. The people were told that western constitutions do not work in Africa and there was need to search for an African democracy. All this was synonymous with dictatorship and tyranny. The constitution was amended ostensible for it to be relevant to the country's peculiar situation but in reality the amendments were concentrated on vesting more power to the executive. By the 1990s, the constitution was now bearing very little resemblance to the original document of 1980 (Mdulo 2010). The document was now shaped by sixteen separate amendments all of which made multiple changes to the constitution. The amendments reduced the country to a party-state and converting the nation into a party-nation. ZANU PF leader became elevated to national symbols. Opposition to ZANU PF was seen as unpatriotic and an enemy of the country. Membership and loyalty to ZANU PF came with great rewards and often immunity from prosecution.

As protests mounted regarding government corruption in the 1990s as well as the general failure to improve the quality of life for all the citizens, the government became undemocratic and authoritarian by centralising power in an attempt to hold on power. Thus the attributes of the state became a highly centralised system of governance, excessive control of all aspects of human endeavour, limited capacity to govern, excessive regulation

of the civil society, weak institutions of the state and civil society, few countervailing forces to the power of the executive, limited participation in governance by the general populace, preferential access to power and resources often determined by ethnical and geographical considerations (Mdulo 2010).

The result of the attributes to the state was an unprecedented economic decline and increasing poverty among the general populace. There was clearly a crisis of governance and as a result there was stagnation in development. Clearly the Lancaster House constitution had failed to gain legitimacy or to provide a framework for the democratic governance. The challenge was how to achieve a stable political and constitutional order that would promote development and good governance. The aspirations became that of achieving a constitutional order that is legitimate, credible, enduring and structurally accessible to the people without compromising the integrity and effectiveness of the process. This is the situation that was prevailing in the country by the time the NCA was formed.

Sachikonye (2011) noted that with the benefit of hindsight, the period between 1990 and 1998 would most probably have provided a more conducive environment and conjecture for constitutional reform. This was because this was a period in which political positions had not hardened to become too adversarial. Sachikonye calls it a lost decade as far as constitutional reform was concerned.

Ncube (2010) argues that one of the consequences of the Zimbabwean regime's deliberate promotion of institutional paralysis in the post 2000 Zimbabwe was the patronisation of policy space within the state and in particular around the person-head of president Mugabe. It became hard for non-state actors that were perceived to be anti-government to easily access policy spaces. Street demonstrates were ruthlessly quashed further straining the state and civil society relations and even dividing the civil society over their appropriateness as strategies of engaging the state.



### 3.2.1 Constitutional Amendments 1981 – 2000

Amendment	Year	Description of Change
1	1981	Reduced qualification period of lawyers to the judiciary and Senate Legal Committee so as make these various offices accessible to black lawyers
2	1981	Created a separate Supreme Court from the High Court. Also specified qualification period for judges, making this more attainable by blacks
3	1983	Afforded Parliament the power to abolish dual citizenship
4	1984	Introduced Office of Ombudsman and reconstituted the Judicial Services Commission to give the President more control over it
5	1985	Allowed for appointment of Provincial Governors by the President
6	1987	Ended the separate roll for whites
7	1987	Created the Executive Presidency and abolished office of Prime Minister
8	1989	Provided for the AG becoming a member of Cabinet thus bringing the judiciary under Executive influence
9	1989	Abolished the Senate making way for a one chamber Parliament
10	1990	Created a second vice-Presidency
11	1990	Terminated land provision for 'willing buyer, willing seller' in favour of 'fair compensation'

12	1993	Reorganized the prison and public services and armed services, reducing their independence
13	1993	Reversed a Supreme Court judgement on the death sentence, stated that delayed execution did not amount to a human rights abuse
14	1996	Reversed a Supreme Court judgement on women marrying foreign men – such spouses no longer became automatic citizens
15	1998	Changed government financial year from 1 <sup>st</sup> July start date to 1 <sup>st</sup> January start date
16	2000	Land provision transferred responsibility for compensation from Zimbabwe Government

Table 1: Constitutional Amendments from 1980 to 2000

### **3.3 THE NATIONAL CONSTITUTIONAL ASSEMBLY (NCA)**

#### **3.3.1 Formation of the NCA**

Magure (2009) argues that the introduction of Economic and Structural Adjustment Programme (ESAP) reforms witnessed an increase in industrial unrest as workers tried to make up for the losses in wages stemming from inflation. Trade unions began to broaden their jurisdiction beyond the shop floor and this ultimately led to the flowering of social movements in Zimbabwe. In light of the fact that workers were no longer earning a living wage coupled with poor working conditions, the only option left was to bring those issues into the national stage by politicising these issues. On the other hand the government's decision to ignore genuine demands from labour in order to ensure the success of the economic reforms predisposed the working class to use the political route in order to protect themselves from the vagaries of the market forces. The increasing economic problems contributed to the erosion of the government legitimacy, providing a fertile

ground for civil society to link constitutional issues to the broader problems of the economy and lobby the state into playing a facilitative but not deterministic role in establishing a process for constitutional reform.

Dorman (2001) argues that the popularity of the NCA soared because they capitalised on both the latent critique of the government and the newly expanded independent media. Despite the sense of crisis rapidly emerging in 1997, public criticism of the government policies had remained until then in the domain of a few activists and academics. One of the NCA's main submissions to the government was that there was a compelling need for the constitutional making process to be free from state control and domination. In 1999 the government hijacked the constitutional making process by setting up the Constitutional Commission (CC) ostensibly to accommodate NCA demands but without necessarily addressing questions of representation, composition and ownership of the process. For the NCA, the government process was fundamentally flawed because it negated the ethos of good governance. According to one of the founders of the NCA, Tendai Biti, "it is not the democratic content that makes a constitution democratic but rather it is the democratic process that makes it democratic, otherwise we should have borrowed a democratic constitution from the library" (Sithole 2000).

The arbitrary amendments to the Lancaster House constitution without any proper consultation spurred the debate about the need for a new constitution. The amendments were seen to be all about vesting power in the executive and even parliament never debated the amendments. The main question raised was whether the idea of constitutionalism as a means of regulating and limiting the exercise of political power had found root in the country's system of governance (Ncube 1991 in Sachikonye 2004). The realisation then was that there could be no significant political and social change that could occur without the re-writing of the constitution. More generally then, the regional conjecture was one in which progressive constitutions were being made in South Africa and Botswana.

The popularity of the constitutional discourse was demonstrated by the emergence of the NCA. This discourse was for the most part conducted under the terrain of liberal human and civic rights (Kagoro 2004). The framers of the initiative that would become the NCA were

driven by their experiences in pursuing social objectives for labour, marginalised groups, victims of human rights abuses, students and women (DuPree 2012). The vision to form NCA was inspired by the community and everyday work of the various participating organisations. In this work they variously realised that without good governance founded on firm foundation of a democratic constitution, the multi-pronged, well-meant efforts to fight poverty, hunger and disease in Zimbabwe would remain a pipe dream. The founders wanted to prepare Zimbabweans through education, discussion and debate to give them a taste that constitutions are made for and by the people.

The NCA was founded on the 14<sup>th</sup> of May 1997 with a membership drawn from religious organisations, professional associations, grassroots structures, trade unions, academic institutions, student organisations, media bodies, business groups, women's groups, political parties and human rights groups. The initial conception was for it to be a one year project to carry out public education on the constitution of the country and its shortcomings as well as organising debates on possible constitutional reform. The NCA mandate was to establish a new tolerant, transparent and democratic legal, political, social and economic order and a new constitutional framework upon which good governance and development could be founded. The aim of the NCA was to subject the constitution making process to popular scrutiny in order to entrench the principle that constitution are made by and for the people.

On the 31<sup>st</sup> of January 1998, the NCA was officially launched intending to make the constitutional making process address the historical and contemporary socio-economic and political challenges confronting the society. It was launched as an open access civil organisation to work with similar minded organisations and individuals in order to establish a new tolerant, transparent, democratic, legal, political, social and economic order as well as a constitutional framework upon which good governance could be founded. At the launch there were about 135 organisations as indicated by the Table 2 below. The delegates at the launch recommended that an independent and impartial body should lead the constitutional reform process, that people through a constitutional referendum should ratify the new constitution written by the people of Zimbabwe and that the process and its structure should be non-partisan (Kagoro 2004).

Churches	9
Interest Groups	8
Women's Organisations	7
Human Rights Groups	4
NGOs	20
Trade Unions	10
Academic Organisations	5
Cultural Organisations	8
Student Groups	5
Resident Associations	4
Political Parties	14
Youth Groups	6
Pressure Groups	7
Other	28
<b>Total</b>	<b>135</b>

Table 2: Membership Organisations of the NCA

The NCA believed that the people should be the key players in the process of building a new constitution. For the first time in the history of the country, the NCA effectively mobilised the population to chart a democratic political process that was independent of the state effectively pressuring the state to accede to the demands of the new people driven constitution. According to Kagoro (2004) the popularity and credence to the agenda of the NCA among the ordinary people was boosted by the events between 1997 and 2000. The government paid unbudgeted gratuities as compensation to war veterans for participating in the liberation struggle and also ventured into the Congo war leading to an economic free-

fall. This resulted in a growing frustration by the ordinary people leading to a series of strikes and stay-aways. The ruthless manner in which the strikes were dealt with by the state added weight to NCA claims that the country was faced with both a constitutional and governance crisis. The increased repression and economic degeneration served to illustrate for the majority of the citizens the disregard for the rule of law and criticism by the executive.

The NCA submitted a statement to the government setting out that it was the duty of the incumbent government to facilitate the constitution making process without seeking to control or dominate the exercise. It also called for the setting up of the appropriate legal framework that would ensure participation by all the citizens in the crafting of the new constitution. The framework would include a law providing for the selection of a broadly representative Constituent Assembly which would carry out consultations to the people and thereafter prepare a report in constitutional form for debate and adoption. The draft approved by the Constituent Assembly would then be put to a national referendum.

The government reacted with scorn and scepticism to the formation and demand of the NCA. The government and ZANU PF argued that the NCA was neither national nor an assembly. In any case they wanted a process driven by the party. The government expressed doubt at the prudence of electing a Constituent Assembly arguing that there was little time before the year 2000 general election. Instead the government suggested the appointment of a commission consisting of all Members of Parliament (MPs) and representatives of various civil society organisations with equal representation. True to what the government had stated to the NCA, on the 26<sup>th</sup> of April 1999 the state president, Robert Mugabe gazetted a Statutory Instrument 138A setting up a Constitutional Commission (CC) of Inquiry (Kagoro 2004). The commission was charged with initiating the process of constitutional review and presenting a new constitution to the president by the 30<sup>th</sup> of November 1999. The commission consisted of 400 members drawn largely from the ruling party and a few from the private sector and state friendly non-governmental organisations. The commission was directed by the president to afford the people the chance to air their views and an opportunity to author and found their constitution enshrining freedom, democracy, transparency and good governance. The commission gathered evidence by holding public outreach meetings throughout the country as well as by receiving oral and written

submissions and its draft would be put to the people in a referendum and if accepted would become law. The state had managed to hijack the constitutional agenda from the civil society by pretending to accommodate the NCA demands. However, the questions of representation, composition and ownership of the process were not adequately addressed and this became the bone of contention with the NCA.

In the midst of all this and having been rebuffed by the government, the NCA held an extraordinary meeting in April 1999 and resolved to convene an all stakeholders constitutional convention. The convention was held in June of the same year and was attended by more than 7000 people from across the political and geographical spectrum. The People's Constitutional Convention (PCC)'s agenda was to define more succinctly the process to be followed in evolving Zimbabwe's next constitution, define the mechanisms that would guarantee genuine national consultation, debate and discussion regarding constitutional principles and the actual content of the new constitution and finally to demand that a national referendum be held (Kagoro 2004). The PCC also resolved not to participate in the government appointed commission and register that the process was defective and gave the executive too much control. The PCC further mandated the NCA to run their own parallel programme of writing their own constitution and mobilising society through civic education. The NCA was to mobilise and educate people on the modalities and reasons for rejecting the government process. The NCA boycotted the government process arguing that it violated the principles it had submitted earlier. The government resolved to continue without the NCA setting the stage for a protracted clash between the two processes, one led by the government and the other by civil society.

True to the arguments of the NCA, the government Constitutional Commission (CC) produced a first draft that was questioned by president Mugabe in an address to the ZANU PF congress. He was critical of the fact that the draft had included a land and property clause that provided for a more generous compensation than the Lancaster House constitution. In response to the president query, the CC produced what it termed 40 clarifications to the draft constitution. Included was the amendment to the land and property clause stating that the government would be absolved from paying compensation of expropriated land if the British did not make funds available. Also included was an amendment that provided for increased executive powers especially in respect to outside

military interventions, compulsory national service for youths and the fact that the limitations of the terms of office of the president did not apply to the incumbent. The draft thus failed to truthfully and faithfully record the views that had been gathered. Workers too were agitating for the right to strike and the draft did not give such rights. The final draft was therefore a deviation from the expressions of the people and this in turn vindicated the NCA which had argued all along that the process was flawed and was meant to hoodwink the general populace into believing that their views would be considered when in fact the executive had their own personal agendas.

### **3.3.1.1 The Constitutional Commission (CC) Constitutional Making Process**

In 1999, the government of Zimbabwe set up a Constitutional Commission (CC) as a direct response to public pressure led by civil society on the need of a new democratic constitution to replace the Lancaster House constitution. Before then there had been suggestions that the NCA process would feed into the government's proposed commission and whilst talks had been held between the two groups, an agreement over the issue of guaranteeing the commission's freedom from presidential interference could not be reached. The government appointed 400 individuals of which 150 were members of parliament as commissioners who would spear-head the process. The commissioners were appointed by the president and were more or less inclined to the ruling ZANU PF party. The commission was headed by the Chief Justice of the Supreme Court of Zimbabwe. The CC was tasked with gathering, analysing and evaluating data from the people on the constitution and to produce a final draft constitution for the presentation to the government for a referendum before adoption.

The CC consulted the people through thematic committees outreach programmes that were established for that purpose. Unlike the NCA, the CC did not emphasise on the amendments to the Lancaster House constitution in its outreach programme but on the problematic nature of the Lancaster House constitution having been written by a small elite in the United Kingdom. The CC's goal was often described as home grown with the government stating that they were not amending the Lancaster house constitution but moulding it in their own image because you cannot have a nation that breathes the historical experiences of another nation (Dorman 2001). Aware of the transparency issues, the CC went far beyond



what any other commission had ever done in the history of the country. They used paid adverts and press releases to outline exactly how the CC would function emphasising that the whole world was watching and thus there was no room for not being transparent.

The mix of the ZANU PF, some opposition figures and non-aligned commissioners was unprecedented, although critics still interpreted it as overly ZANU PF. The CC appealed for donor funding in order for them to carry out the process. The formation of the CC led to some serious divisions within the NCA and civil society as some groups chose to be incorporated into the process while others insisted on being autonomous. Some organisations saw this as a chance to work within the system especially as it was against the background of the government's implicit corporatist approach to civil society organisations and nongovernmental organisations. Some NCA members became more assured in their determination not to cooperate with the CC as this would legitimise the process. However, the formation of the CC created a situation for a much more conflict prone and combative discussion of the constitution (Dorman 2001).

In August 1999, the CC began a programme of 5 000 meetings that were organised by 8 provincial teams to solicit for the people's views. Dorman (2001) recons that while the independent press took great pleasure in detailing the CC meetings that were characterised by the low turn outs, many people did address the Commissioners and with great forthrightness. The CC claimed to have organised 4 321 public meetings which were attended by 556 276 people as well as 700 special ad hoc meetings that were attended by 150 000 people. In addition they received 4 000 written submissions. They also had radio and television programmes as a way of reaching out to the people. In October 1999, the CC held an open 3-day plenary session in which the views from the provinces, interest groups and political parties were presented. After the session everybody became aware of the dominant views from the people's submissions. When the CC prepared the draft, it was noted that the draft had deviations from the people's submissions and that what had been presented by ZANU PF during the 3 day plenary session was now dominant in the draft. There was a public outcry with at least 24 Commissioners resigning in protest and others taking the Commission's chairperson to court.

The outreach for the CC was heavily decampaigned, rejected and boycotted by the NCA who were not happy with the composition and terms of reference of the CC. The CC went ahead with its government driven constitutional making process and produced a draft constitution that was presented to the government for consideration. The government adopted the draft constitution before organising a referendum where the draft was offered to the people to accept or reject through a vote. In February 2000 the people rejected the draft constitution with a 54% 'no' vote. The very public failure of the draft constitution to reflect on the content of the people's submissions to the commission during the course of the public hearings led to the dramatic rejection of the draft. Unsurprisingly it was criticised by those outside the process who emphasised on the issues that the CC had negated but had featured prominently from the people's submissions during outreach.

### **3.3.1.2 The NCA and the CC**

By the time the government appointed the CC in 1999, the NCA had already done a lot of work in conscientising the people on the need for a new democratic constitution written through an inclusive people driven process as a way of solving the country's socio-economic development as well as promoting good governance. The NCA rejected the manner in which the government's CC had been established as well as the way the commissioners had been appointed arguing that they were partisan and the government's control of the constitutional making process. The NCA argued that the commission's constitutional making process was not people driven since the process was owned, managed and controlled by the ruling party and its government. In rejecting participation in the CC process, the NCA thus undermined the legitimacy of the government commission. After rejecting the government driven constitutional making process, the NCA began a parallel process of consulting the people on the constitutional issue as an alternative to the people of Zimbabwe. During the consultation process, the NCA would gather the views of the people and in this way they maintained a national presence that would also overlook the initiatives of the government sponsored commission. Such strategies were meant to draw support for the NCA as well as providing legitimacy and authoritative presence in the constitutional debate. It is possible that the transparency and greater openness to which the CC conducted its business was in part due to the presence of the NCA. After collecting the data, the NCA analysed and evaluated it before producing its own draft. During these outreaches, the NCA encouraged

its membership to vote against the government CC draft. They also vigorously campaigned against the CC process and urged the people to reject the draft.

### **3.3.2 Structure of the NCA**

The NCA's had a vision of a prosperous, peaceful, democratic and united Zimbabwe founded on the principles of human dignity and social justice. Its goal is for Zimbabwe to have a new, democratic and people driven constitution. A new democratic constitution according to the NCA is the only basis of good governance in Zimbabwe that will in turn lead to social and economic development.

The aims and objectives as set out in its constitution are:

- To strive to promote, deepen and broaden the concepts and practice of democracy, transparency, good governance, justice and tolerance in the republic of Zimbabwe.
- To strive for the initiation of a constitutional making process in Zimbabwe by engaging in the process of enlightening the general public on the deficiencies and weaknesses of the current constitution and advocate for a new one, participating in any fora organized to discuss the constitution and preparing a draft for a new constitutional order.
- To strive to protect, deepen and foster a human rights culture and rule of law in Zimbabwe
- To implement, incorporate and protect in the country international human rights norms as contained in conventions such as Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, United Nations Convention on the Elimination of all forms of Discrimination against Women, the United Nations Convention on the Rights of the Child and the African Charter on Human and People's Rights.
- To work with other similarly minded organisations or individuals in establishing or striving to establish in Zimbabwe a new tolerant, transparent and democratic, legal, political, social and economic order

and a new constitutional framework upon which governance can be founded.

The core business of the NCA centred on;

- Arranging meetings, seminars, debates and training workshops consistent with its objectives.
- Issuing public statements on important national issues.
- Monitoring social, political and legal developments in Zimbabwe and submitting position papers to relevant bodies and authorities.
- Organising and participating in public campaigns including peaceful demonstrations, protests, boycotts or stay-aways or any other such activities.
- Organising and authoring publications including leaflets, newspapers, journals or petitions.
- Creating regional and local subcommittees or working groups with an interest in or concern with the aims and objectives of the NCA constitution.
- Engaging in local and international networking.
- Creating archives, data bases and resources for its activities or any other related activities or developments in Zimbabwe.
- Assisting litigants or participating in any litigation including representative actions in which important human and constitutional issues are raised
- Doing all such things as are necessary to achieve the aims and objectives of the NCA.

### **3.3.2.1 Institutional Structure**

The NCA had five main organs that is; the Congress, the Annual Consultative Assembly, the National Taskforce, the Region and the Constituency. They also had structures at national, regional (provincial), constituency and ward levels. The organisational structure had two main components that is the political structure consisting of the various elected bodies at the various levels and the secretariat consisting of the employees of the organisation.

The Congress met every five years and comprised of representatives from the various constituencies of the NCA, chairpersons, secretaries, youth representatives, women representatives and committee members. The Annual Consultative Assembly was converted

from the Annual General Assembly following the 2006 amendment of the NCA constitution. The Annual Consultative Assembly was the supreme governing organ of the NCA comprising the Taskforce, Standing Committees and the Regional Committees. It would meet annually to formulate policies and principles for the NCA, review and supervise the work of the National Taskforce, approve audited financial statements and elect members of the national Taskforce. It also had powers to repeal and amend the constitution.

Below the Annual Consultative Assembly was the National Taskforce consisting of 33 members elected in accordance with the procedures to the constitution and serve for five years. The taskforce was responsible for managing the affairs of the NCA. It was akin to an executive board and dealt with the decision making in between congresses. It had a broad range of powers which include promoting and implementing the aims, objectives and policies of the NCA. It could also employ any person to manage or assist in the management of the objectives of the NCA and remunerate such an employee from the funds administered by the Taskforce and to create subcommittees of its members as well as controlling the financial affairs.

The NCA constitution also provided for 8 standing committees of the Taskforce to assist in carrying out its functions. These were the Local Regional Committee, Management Committee, the Media and Information Committee, Gender Committee, Advocacy and Action Committee, Disciplinary Committee, the Legal Committee and the Youth Committee. Three additional committees were created pursuant to the power of the Taskforce under the constitution to create sub committees of its members and to prescribe terms of reference for these subcommittees. The additional committees were the Political Liaison Committee, Human Rights Committee and the Editorial Committee. Each of these committees was chaired by a member of the Taskforce.

The functions of all the other committees were provided for by the NCA constitution except for the Political and Liaison Committee, Human Rights Committee and the Editorial Committee. It was notable however that the constitution contained contradictory provisions concerning the composition of some committees for example the Management Committee (Lumina 2009). One provision noted that the Management Committee consisted of the Chairperson, Vice Chairperson, Chairpersons of the Standing Committees and four other

members of the Taskforce (making a total of 14 members) whilst another provision stated that it shall be chaired by the Chairperson and shall consist of not more than five members of the Taskforce, making it a total of 6 members (Lumina 2009). The Taskforce was also responsible for the day to day supervision of the secretariat, recruitment of staff, fundraising and financial management.

The secretariat was comprised of all employees of the organisation and headed by a National Director and assisted by some senior staff below who were either administrative or support staff. The constitution of the NCA was not clear on the role of the secretariat save for some rather vague and ambiguous reference to the secretariat supposed to hold regular meetings of its own to discuss, set goals and targets as well as any other office matters (Lumina 2009).

### **3.3.2.2. Membership**

The NCA membership comprised of two categories that is individual and institutional. The institutional members are composed of other organisations such as political parties, labour organisations, women organisations, youth groups and student organisations. Both individual members and institutional members paid a membership fee and this was also a way of raising money for the operations of the organisation.

At its inception the NCA managed to put up structures across the breath of the country in both urban and rural areas. However, after the violence that erupted in 2000 with the land invasions and the failure to wean itself from the MDC, they too suffered as the rural areas became no go areas for people perceived to be anti-ZANU PF. This failure to separate the civil duties from the oppositional politics of the MDC would become an albatross neck on the operations and the structures of the NCA.

The NCA recruited new members through public meetings and door to door campaigns. The responsibility for maintaining the membership records at Regional level lay with the Field Officer whilst at national level it was the responsibility of the Advocacy and Youth Officer. According to a 2003 NCA National Evaluation Report, the NCA membership stood at 500 000 individual members and 150 institutional members (Lumina 2009). In 2006, the NCA reported that it had managed to recruit 3526 new members. However the NCA did not have

proper records of its membership and most numbers were based on estimates. The 2009 Evaluation of the NCA determined that from presented documents, the NCA had 1648 members as indicated by the Table 3 below;

<b>Region</b>	<b>Male</b>	<b>Female</b>	<b>Total</b>
Bulawayo	45	15	60
Harare	127	141	268
Mashonaland Central	64	15	79
Mashonaland East	120	82	202
Mashonaland West	282	199	481
Masvingo	44	85	129
Midlands	159	34	193
Manicaland	93	18	111
Matebeleland South	42	8	50
Matebeleland North	63	12	75
<b>Total</b>	<b>1039</b>	<b>609</b>	<b>1648</b>
<b>Percentage</b>	<b>63%</b>	<b>37%</b>	<b>100%</b>

Table 3: NCA Individual Membership (Lumina 2009)

### 3.3.3 Programmes of the NCA

From its inception, the NCA sought to build a broad alliance of civic organisations around the issues of constitutional reform and the language of constitutionalism. In order to fulfil this objective, the NCA carried out a series of meetings and seminars at different levels. At provincial level, it organised meetings to broaden its appeal at a national level so as to move away from the idea that it was a Harare based organisation. In organising these provincial meetings, the NCA started a process of establishing national structures and conducted a

series of sectoral meetings on a range of issues that included media, land, economy, churches, women, youth and Parliament. Such meeting were intended to relate discussions on the constitution to broad societal issues as well as to inject the discourse of constitutionalism into as many areas of discussion as possible (Raftopoulos 2000).

The NCA employed a multi-prolonged strategy involving education, conscientisation and politicisation of the populace. They used rallies, marches, conventional workshops and seminars targeted at specific interests groups such as women, youth, traditional leaders and minority groups. This also included community outreach programmes using specially trained facilitators to discuss the constitution with the rural communities as well as collecting their views on reform. Remote areas in rural areas were reached by touring drama groups that had been trained in interactive community drama and equipped with vernacular print and graphic material so as to reinforce their message.

The informational and educational strategies of the NCA also extended to newspaper television and radio advertisements as well as organising a series of demonstrations in various parts of the country to publicise its objectives. Local broadcast service for the indigenous languages was extensively used to penetrate the rural areas that had access to electronic media. Urban audiences were targeted using billboards, newspaper adverts, radio and television adverts. Holding public workshops was one of the main activities of the NCA. It created public education material to explain how the challenge of the constitution related directly to the social and economic objectives of Zimbabweans.

For example Figure 1 below is a cartoon from an NCA brochure illustrating citizens failing to comprehend the rampant corruption, governance issues and the need for less executive power so as to enhance political participation. Such messages were carried to the people by the 600 trained trainers who were at first trained by the NCA to carry the messages to the people. It is also worth pointing out that in the NCA's intensive awareness campaigns, they benefited a lot from the organisational structures of the labour movement, the churches and other grassroots organisations. These organisations ignited and sustained the momentum for the organised campaign for a popular constitutional reform. The messaging from the NCA to the people was that there is an authoritarian constitution that rendered economic and political power in the hands of the few thus benefiting the minority. All the



misery the people were suffering from was blamed on the constitution. People were under the control of the few leaders where power was used in a dominating way and politics was based on personality cults and empty promises resulting in a weak society characterised by apathy, dependency and corruption.



Figure 1: NCA Citizenship Illustration (Du Pree 2012)

It was against this massive publicity campaign that the government constitutional referendum was held on the 13 and 14<sup>th</sup> of February 2000. The referendum was held in a much polarised atmosphere with the government controlled media refusing to give space to those who were opposed to the draft constitution. A total of 1 300 000 people voted and

54% voted against whilst 46% voted for the adoption of the draft. The result of the referendum was a shocker to the government and ruling party were shell shocked. The people had done the unthinkable by defying the state and had won (Kagoro 2004). The success of the 'no' vote provided the electorate with a sense of hope and presented a major step towards imagining alternative futures (Kagoro 2004). The referendum rejection was significant in that it was the first time a major rejection of a political position put forward by ZANU PF. Although it can be interpreted as a protest vote against the state's management of the economy, credit should also be given to the NCA for vigorously campaigning against it. In rejecting the draft, the people thus asserted their power and resisted the state domination and attempt to deny them their right to name their world and thereby reconstitute it (Kagoro 2004).

The NCA's broad objective of creating a discourse around the exercise and practice of political power in Zimbabwe had been achieved. However, according to Kagoro (2004) the referendum result was a pyrrhic one because the vision of a new constitution had not been achieved and also the government's response caught the NCA off guard. The government stated that they respect the wishes of the people to reject the draft constitution and that this meant the people were happy with the amended Lancaster house constitution. This distortion was immediately followed by the farm invasions and the violent 2000 general elections. The violence that occurred was unparalleled in the history of Zimbabwean elections. In the middle of violence, there was so much political polarisation and the NCA was labelled as the same with the opposition MDC. The violence decimated the structures that NCA had managed to build.

As mentioned above, NCA programmes were limited in the post 2000 era. However they remained resolute in their fight to educate Zimbabweans that the struggle for a new constitution remained the only alternative out of the political abyss the country was in. The fact that the constitutional reform agenda remained on the spotlight till the days of the Government of National Unity (GNU) highlights the positive influence of the NCA. The post 2008 elections when there was persistent violence against the opposition, the NCA was able to raise the issues of constitutionalism and under the banner of the Save Zimbabwe Campaign they were able to put the country on the spotlight such that eventually SADC intervened culminating in the talks that led to the establishment of the GNU. One of the

conditions of the GNU was that the country should rewrite the constitution and it is this period that led to the dormancy of the NCA. The parties in the GNU were able to write the constitution and NCA refused to participate claiming the process was flawed and was led by politicians and therefore could not produce a perfect document but one similar to the Lancaster one in which the views of the parties will carry the day. To a big extent they were vindicated. However, the new constitution was approved and the country went into elections in March 2013 where ZANU PF won convincingly. The NCA disappointed by their former partners, the MDC announced on the 29<sup>th</sup> of September 2013 that they were transforming into a political party as they had realised that it was futile to continue to fight for the re-writing of a new democratic constitution. Their strategy now is to fight for the political space, win elections and re-write a new people driven constitution.

### **3.4 Conclusion**

The constitutional discourse that culminated with the constitutional referendum in 2000 raged on during the course of the Zimbabwean crisis, was still at the centre of the political reform process under the coalition government (2009-2013) and is still a burning issue today even after the adoption of the new constitution authored by the coalition government in 2012. According to Ncube (2010) the discourse on a 'people driven' constitution is/was informed by the classical debate on whether the law left at the whims of the state (ruling elites) is promotive or inhibitive of a democratic society. The struggle over law aimed to make subordinate classes to become legislators by achieving authoritative, norm creating capacity (Ncube 2010). The term 'people driven' constitution in the civil society became a differentiating principle between those on one hand, who seek to legitimate the continuation of the hegemonic status quo and those who seek to democratically transform the status quo. Thus the quest for a new constitution should be seen as a way to seek to create new institutions that are responsive and conducive for economic development and a well-grounded constitutional discourse was to be the prerequisite for this newly found impetus for democratisation and development.

Constitution making is largely about building the political community as well as structures. In the Zimbabwean context, there is need for a more democratic system as well as the need to build political institutions that has been distorted by political manipulation. The future of

democracy in the country rests upon the development of constitutional arrangements that can guarantee viable institutions in which to conduct the business for good governance. This means developing a constitutional order that channels conflict into non-violent settlement of differences, preserves the ability of groups to participate in a continuing dialogue about policy, generate governments that are accountable and focuses attention on shared aspirations. In order to ensure that the citizens feel a sense of ownership in the constitution, the process must ensure extensive consultations with the people and all principal stakeholders before any constitution can be drawn up and adopted. Therefore the process ought to be inclusive, transparent, accessible, accountable and empowering to civil society

## CHAPTER 4: CURRENT STATE OF AFFAIRS

### 4.1 Introduction

Underpinning the conflicting beliefs around the nature and suitable role of civil society are two conflicting conceptions. The Anglo-American liberal tradition that posits that civil society is an autonomous realm of associational life above the individual and family and below the state. According to this view, civil society demarcates social space against the state and market to uphold a sphere of political life for citizens. It has a precautionary role against the state and an advocating role to protect the individual rights and liberties from incursions by the state and to promote and expand them (McCandless 2011). The Marxist tradition on the other hand identifies civil society as the site of economic relations upon which a legal and political super-structure is elevated to become the socio-economic base of the state. Thus the state and civil society for Marxists are executive arms of the bourgeoisie and therefore the state can never be a neutral arbiter or serve societal interests as a whole. Zimbabwean scholars on civil society have therefore chartered on the Gramscian middle ground that argues that civil society is neither entirely captive of the state nor autonomous but rather is a site for problem solving where society might be defended from the incursions of both the state and the market.

However, Gramsci also argued that it can be a battleground where the state, ruling elites and other powerful actors intervene with hegemonic projects to influence and spread the agendas of organised groups. As such the nature and role of civil society in Zimbabwe is deeply questioned. Accusations about political and self-serving agendas and motives of different actors and their alliances and relationships with political parties, the government and the donors are at the heart of conflict and polarisation (McCandless 2011). This flies in the face of liberal conceptualisations that suggest that civil society is autonomous from the state, often in a watch dog role with more collaborative, partnership oriented relationships with international organisations and even donors. Such a role could have been the role played by the NCA in its quest for democratic constitution as a vehicle for good governance and development. However some left leaning nationalists analysts view the liberal conceptualisations as imposed and in conflict with the redistributive concerns especially

considering the fact that the NCA was opposed to the land reform program because it was against the 'rights' framework that they were fighting for in a new constitution. The NCA struggle for the rights to civil liberties could have been the bone of contention here because the left leaning nationalists saw the violence that characterised the land reform programme as a necessary evil to achieve entitlement.

The NCA was born with the aim of facilitating a popular view of Zimbabwe's constitution and building capacity for popular participation in decision making around constitutional issues. From the start, the NCA's central grievance focused on a critique of the Lancaster house constitution on both its content and the process by which the several amendments were being made. The years before had been characterised by a systematic dislocation of the majority of Zimbabweans from participating in political activities. As the discontent over the economic situation grew, the NCA increasingly focused its grievances on what was seen as the root problem, that of government accountability and the extended powers and term limits of the executive. The NCA wanted to rationalise constitutional power among the organs of the state. The NCA launch resolutions called for the development of an independent, impartial body to lead to an accessible constitutional making process that would ensure a broad based and inclusive participation of all citizens. It also resolved that the process should be non-partisan and the people should ratify the new constitution through a referendum.

This chapter presents the current state of affairs based on the samples of interviews that were carried out in this research. The chapter presents data on the perceptions of the respondents on the role played by the NCA in promoting good governance and development in Zimbabwe over the years. The chapter will look at NCA governance structure, its relationship with the government, the opposition and donors. It is only through such a presentation that one can truly analyse if the idea of liberal civil society is alien to developing countries of the south especially against the back ground of critics that do not see any value in civil society because they are just importing a western idea to a different environment, culture and system.

## **4.2 The Governance structure of the NCA**

The governance structure of the NCA has expanded and metamorphosed numerous times over the years. As noted in the previous chapter, at its inception the NCA was a circle of NGOs, civic bodies, trade unions and concerned individuals. Its second meeting was attended by about 50 people and a seven member Task force was elected to lead the organisation, themselves being representatives from the civic organisations. This small national structure eventually grew into one of the largest structurally decentralised organisations in the country. Its management was crystallised into four levels that is the Annual General Assembly, the Task force, the secretariat and the structure. The Task force consisted of 28 members elected by the assembly. The Taskforce was further fragmented into different committees. The secretariat comprised of all employees of the organisation covering all the 10 provinces of Zimbabwe. However by 2012 the secretariat was now only based at the Head office in Harare and was much reduced in terms of numbers because of the withdrawals of most of NCA's major donors. The Task force comprised of mainly 'politicians' and activists directly elected at the general assembly and would in turn form various subcommittees. Two positions in the Taskforce were reserved for women under the women quota gender representation. There were also two seats reserved for youth. Women representation was also guaranteed in the lower levels with seats reserved in the structures from the provinces right until the constituency and ward/district level. The least level of structure were the 'structures', them being the member bodies at all levels in both the rural and urban areas.

### **4.2.1 Internal Democratic Governance of the NCA**

Effective internal democratic governance is generally assumed to include issues like transparency and broad based participation in the organisation's decision making process and implementation around the selection of leaders, accountability and responsiveness of leaders to their members and the degree to which the women, youth and minorities are integrated into the structure and function of the organisation in meaningful ways (McCandless 2011). The NCA constitution had the Annual General Assembly (AGA) as the supreme governing organ of the organisation followed by the Taskforce and the various thematic committees made up of the Taskforce members. The AGA had a role to formulate

the broad policies of the organisation as well as supervising the work of the Taskforce. The AGA met twice a year and in the interim period the Taskforce would be enforcing or making decisions based on wide consultations, gathering and reporting on the output of the structures from the ward level to the provincial level.

However, it would seem from the several responses from interviews that by 2013 the structures of the NCA had virtually collapsed and it was just individuals in the Taskforce purporting to represent the 'people' who would sit down and make decisions. Most decisions were said to be emanating from the chairperson of the organisation who wielded so much power that no one could voice against him. The evaluations of the NCA by Lumina (2009) also seem to have confirmed this. Some respondents said it had become impossible to separate the Taskforce and the Secretariat. Some decisions reportedly made by the Secretariat were said to have been an extension of the Taskforce. However in interviews with former Taskforce members, they categorically denied this, insisting that the NCA structures were still intact and most of the decisions emanated from the grassroots. In fact they claimed the NCA constitution had no room for anyone to make unilateral decisions. One former Taskforce member argued that their detractors especially their erstwhile former allies in the MDC had been instrumental in the withdrawal of most of their donors in order to incapacitate them and peddle stories that the NCA was a dead organisation. In response to the fact that the congress had not met since 2006, the former Taskforce members added that this was due to financial constraints faced by the organisation and not that the leaders were clinging to power. Either way for an organisation to spend so much time without holding a congress where the general membership participates and crucial decisions should be made and leaders are elected does not sound well for good governance.

Because the Taskforce had direct links to the constituencies, some respondents noted that the Taskforce could easily manipulate the electoral person in the election of leaders. Although this might not have been, the elections of the NCA post 2000 have been marred by allegations of rigging and voter irregularities. Indeed a resolution by the Taskforce to change the NCA constitution from a two term limit for the chairperson of the organisation for him to be at the helm until the struggle for a new constitution is achieved was heavily criticised. Furthermore, the decision by the Taskforce to delay the AGA was also interpreted as a way to cling to power. One government official quipped in the interview that there was nothing



democratic in the NCA about the governance of the NCA since it had become a personal property of the chairperson. Such conceptions whether they are true or false does not augur well for the transparency of an organisation. McCandless (2011) noted that the tension that surrounded the move from institutional membership to individual ones created an unnecessary tension, rifts and mistrust between the grassroots and the academics from the institutions thereby curtailing the sustained involvement and participation.

The 2009 evaluation found lack of comprehensive records and poor quality of data for example outdated membership cards and poorly prepared annual reports that made it difficult to obtain accurate information (Lumina 2009). The report notes for example that large proportions of the 2006 annual report was substantially similar to the 2005 one while the 2007 annual report ostensibly covering the period from the 1<sup>st</sup> of January to 31<sup>st</sup> December 2007 mentioned 2008 events (Lumina 2009). The report also noted gaps in terms of information including incomplete statistical information concerning attendances to workshops which made it very difficult to assess NCA programme offerings and key organisational development activities. For example the 2005 annual report contained statistics on attendances at grassroots workshops for the period January to December 2005 but only the attendance figures concerning gender and youth workshops and public meetings for the period January to June 2005 were recorded without any explanation on the lack of other relevant statistics. This could make it debatable if such activities took place at all. It also makes it difficult to compare attendances for the preceding and succeeding years for any assessment on whether the activities reached more beneficiaries during the periods under review.

The NCA management and administration systems and procedures were set out in the Management System Manual which was initially adopted in 1998 by the Finance and Management Committee of the NCA Taskforce. The manual covered guidelines on issues of employment, records keeping, hours of work and remuneration, administration of finances and allowances. The 2009 evaluation found that the Management Systems Manual was repetitive in some parts and contained some provisions that are unclear and could cause confusion for example workers were supposed to take instructions from the director or a member authorised by the Taskforce a situation that could lead to confusion especially in

circumstances where the director and national Taskforce member gives contradictory instructions concerning the same matter (Lumina 2009).

The NCA constitution mandated the vice chairperson to chair the Finance management committee responsible for fundraising and allocating resources to the secretariat and for the supervision of the secretariat. However the evaluation of the NCA in 2009 (Lumina 2009) noted that the chairperson controlled all the funds and how they were allocated. The report noted that such practices borders around bad governance and there were always allegations of misappropriation of funds. The interviews of former workers carried out during this research also noted that there was no transparency on the manner in which the organisation's funds were held. They noted that ultimately everything went down to the chairperson and even noted that when some workers went for a period of time without receiving their salaries, they had to talk to the chairperson because he was the ultimate accounting officer.

The management system manual provided for a centralised financial administration system with bank accounts being administered by the national office. Financial controls included the requirement that a cheque must be signed by two signatories and that all expenditures should be supported by documentary proof. The signatories were the national director/coordinator and the Taskforce members appointed by the Taskforce on the recommendations of the Finance and Management Committee. The management system manual also contained provisions regulating the use of the NCA assets especially vehicles. Acquisition of vehicles and assets were supposed to be authorised by the Taskforce on the recommendations of the Director. No member of the NCA could use the organisational vehicles for personal purposes save for the Programmes Coordinator, Director, Administrator and Finance Manager. Despite what was contained in the manual, the evaluators found that the chairperson was using the NCA vehicle as a personal one and even those entitled to use the organisation's vehicles no longer had them (Lumina 2009). It was noted however during this research, that the NCA no longer had vehicles as they had been attached by the sheriff of the court owing to a labour dispute.

Based on the findings of the NCA evaluation and interviews carried out during this research, the issue of good governance seem to have been problematic for the NCA. Most of those

interviewed alluded to the fact that the NCA had become more of the property of the chairperson. Workers were going for months without remuneration, although this could also be due to the fact that there was over reliance on donor funding and when the donors decided to withdraw their funding the NCA was found wanting. They failed to plan for a self sustaining measure to fund their activities.

#### **4.2.2 Leadership and Accountability in the NCA**

The NCA has had three chairpersons of the Taskforce since its inception, the chairperson being the most powerful position in the organisation. The first chairperson was Morgan Tsvangirai who was chosen because of his position as the secretary general of the labour union organisation, the Zimbabwe Congress of Trade Unions (ZCTU). The ZCTU was the largest or biggest civic organisation in the NCA and in the country. When a number of civic leaders in the NCA began to note that the constitution alone was not going to achieve the crisis of governance and moved to form a new political party, the MDC in 1999, Tsvangirai left his position together with other leaders to head the newly formed MDC in September 1999. The decision to form the political party on the basis that constitutional reform alone could not solve the crisis of governance was itself a problem especially coming from people who three years earlier had raised the issue of constitutionalism as the drawback to good governance and development in the country. This decision would go on to haunt the NCA, as it played into the sustained views of its detractors including the government as they would discredit the NCA as a political organisation whose leadership was interested in political office. Morgan Tsvangirai led the NCA through its early development phases, cultivated the use of radical strategies in opposition to the government and was able to build its social movement base in preparation of its 'No' vote campaign against the government sponsored draft constitution in 2000.

The next NCA chairperson was Thoko Matshe who was Morgan Tsvangirai's deputy and took over when Tsvangirai resigned to take up leadership of the MDC. McCandless (2011) credits Matshe for uplifting women representation in the NCA. She also presided over the NCA's greatest achievement, the 'No' vote against the government draft constitution in March 2000. A highly controversial NCA AGA in 2001 saw the election of Lovemore Madhuku as the third chairperson of the NCA. Madhuku remained at the helm of the NCA until 2013 when

the decision to transform the NCA from a civil society organisation to a political party was made. He remains the interim leader of the NCA party. Madhuku transformed the NCA from being an institutional membership body to individual membership. Madhuku also managed to have the NCA constitution amended in 2005 when his leadership term was coming to an end having served two terms and not eligible for re-election to allow himself a third term.

Madhuku oversaw the development and production of the NCA draft constitution and drove the body towards a more grassroots oriented structure. His tenure has been the most controversial. To his credit, he has been a leader who led from the front. He also presided over the radicalisation of the NCA adopting more and more confrontational methods with the government. Madhuku continued to be at the forefront of radical resistance oriented mass action (McCandless 2011).

Madhuku presided over the most controversial terms of the NCA. In 2006 the NCA held its congress that approved some controversial amendments to the NCA constitution. It extended the term of office of its leadership from two to five years. Previously the NCA constitution provided a maximum of two terms of two years for the leadership. The incumbent leadership then had served two terms and were supposed to step down. The incumbent chairperson was re-elected unopposed in a situation that courted a lot of controversy. Supporters of the amendments and the re-election of Madhuku as chairperson argued that the continuation of the leadership was necessary to prevent the infiltration of the NCA by ZANU PF. Critics however argued that the amendments and elections went against the good governance principles for which the NCA stood for. They also argued that the election had set a very embarrassing precedent for civil society because civil society was urging politicians to overstay. Other civil society organisations criticised the re-election of Madhuku arguing that there was need to build democracy from within civic organisations and that what had happened in the NCA was incompatible with good governance and democratic constitutionalism.

The events of the 2006 congress seem to have undermined the credibility of the NCA as a good governance advocacy organisation and may have led to the reduced involvement of some of the NCA's institutional members in the organisation's activities. Other notable changes brought by the amendments to the constitution included the conversion of the

AGM of all members into an Annual Consultative Assembly comprising the Taskforce, Standing Committee and Regional Committees and the establishment of the congress to be held every five years. The establishment of the congress for all NCA members after every five years had the unfortunate consequence of limiting participation of ordinary members in decision making to once every five years.

Some of the respondents in this research confirmed widespread perception that the NCA was dominated by its chairperson therefore undermining the credibility of the organisation. In September 2013, Madhuku presided over the NCA congress, the first since 2006 that called for the transformation of the NCA from a civil society organisation to a political party arguing that lobbying for a people driven constitution had failed to yield positive results and that the inclusive government formed in 2009 had forced a new constitution onto the people of Zimbabwe. Some people said they had expected Madhuku to relinquish his hold on the NCA especially when it was announced that a congress would take place in September 2013. According to the NCA, the best option was seen as to fight for political office and rewrite the constitution after the attainment of political office. Several respondents to the interview of this study argued that the passage of a new constitution in 2013 was the NCA's Waterloo. Donors had fled them when they decided not to participate in the inclusive government process and therefore there was nothing more to fight for. It was generally accepted that the new constitution adopted in 2013 was generally a good document compared to the Lancaster house constitution and thus the NCA was beginning to lose relevance. Almost all the respondents were of the view that the NCA could have done a better job as a watch dog organisation.

#### **4.3 The NCA membership**

At the inception of the NCA and probably until after the March 2000 referendum, the NCA membership was institutional. The institutional organisations members automatically contributed their members to the NCA. Although the NCA was still open to individual membership, the majority came from the institutional member organisations. In this way it was possible by then to estimate membership. The members of the institutional body members of the NCA thus cross-fertilised and a common membership grew (McCandless 2011). There was debate around the issue of individual membership but they were

eventually allowed because the NCA constitution clearly stated that membership was open to “individuals and institutions who share the objectives of the organisation.”

In the early formative years of the NCA it would seem, however, that the NCA was founded upon the principles of and directed by its institutional members through the Taskforce. By then the structure of the NCA strictly resembled that of a civic network. The political orientation of the NCA began to change during the campaign against the government sponsored draft constitution in 2000 and in the aftermath of the people’s rejection of the draft. The referendum no vote highlighted that the NCA had grown and had a lot of non-aligned members. These had to be accommodated too and the organisation had to transform itself with a focus on individual members than the institutional ones. According to McCandless (2011), the NCA saw this as a clear and better way to develop a genuine mass base that was unaffiliated as well as broadening the membership and reaching out to the rural areas. By reaching to the rural areas, this would demystify concerns that the NCA was an urban civil society organisation catering for the urban people.

However, this shift was problematic to the NCA because it became difficult for them to account for their membership. A membership database is said to have been created but it was never utilised. One way of keeping records of proper membership was to check with the subscriptions, however as the economy began to take a knock people were no longer subscribing as members and paying the annual membership fee. NCA was also relying on donor support for its operations rather than member’s subscriptions. Membership was estimated based on attendances at workshops, meetings and marches. For example the number who voted against the government draft constitution in 2000 was taken to be members of the NCA even if the turnout was generally poor. Equally so the people who voted against the Inclusive government draft constitution in a referendum in 2012 were interpreted as members of the NCA. Thus some respondents boldly proclaimed that the NCA had 70 000 members based on the referendum results. Again the turnout was very poor. Another respondent argued that the 2013 referendum was best to estimate membership because both ZANU PF and the MDC formations supported the draft constitution and therefore if their members voted for the draft, and only the NCA campaigned against the draft, then we can safely assume that the no vote membership belonged to the NCA. Obviously this line of reasoning is not scientific because it reduces the

people of Zimbabwe into belonging to ZANU PF, the MDC formations (MDC, MDC-T) and the NCA. Furthermore it does not follow that because the three main political parties in the inclusive government supported the draft then their entire supporters followed suit.

The NCA membership which was obviously strong at the time of the first referendum in 2000 dwindled in the following years owing to the massive state sponsored violence that was waged against prodemocracy forces between 2000 and 2008. During this period, the NCA structures were decimated and efforts to revive them after the Inclusive Government of 2009 when violence had decreased proved to be an uphill task as the organisation had begun to be deserted by its donors and had become financially crippled to undertake activities and boost its membership. Most of its secretariat offices in the provinces had to be closed and NCA had to work with a dwindled staff.

Despite these challenges, former members interviewed in this study said the organisation had a healthy membership. They were pointing to the 2013 referendum but as noted above this line of reasoning is unscientific. The membership of the NCA participated in the activities of the organisation as well as a role in influencing policy direction. Members participated in elections as voters or candidates for the Taskforce for any position. Members could also ask any questions to the Taskforce verbally or in writing. Members were also supposed to spread the message of the NCA to the general populace as well as attending workshops and meetings at national, provincial, district and ward level. Members were also supposed to mobilise for NCA activities.

This structure of the NCA meant that it had shifted from the earlier days when institutional membership held sway. Most of the institutional organisations that had been at the forefront in the beginning left as they no longer had voice. In a way the NCA lost access to the constituencies of those organisations. McCandless (2011) also notes that this also led to a diminished capacity for strategic thinking and programming. In a way the structure of the NCA metamorphosed to reflect that of a political party with political structures from national, provincial, constituency, district and ward level with no consideration to technical skills and competencies (McCandless 2011). Such a structure led the NCA to be at the mercy of the government who refused to accommodate the NCA as a civic organisation but saw it as a political organisation interested in oppositional politics and regime change. The close

association to the opposition formations of the MDC was also problematic as most members of the NCA were members of the MDC making a distinction difficult. It was common to see MDC members wearing their party regalia at NCA meetings. In the political violence that engulfed the country from 2000 to 2008, this closeness exposed the NCA members to violence and as the structures of the MDC were destroyed in most rural areas so were the NCA structures by extension.

#### **4.4 NCA and Gender Development**

The NCA operated in a country that is highly patriarchal and although the constitution of the country had guarantees for women's rights, several women's organisations have always lamented the fact that not enough is being done to improve women's rights. The NCA constitution had guarantee provisions for gender emancipation for example the Taskforce had a gender committee led by women who were automatically elected. In fact in the structures of the NCA, there were provisions for a gender quota. McCandless (2011) also notes that while it is clear that the NCA had made pragmatic and staffing efforts to empower women and ensure full participation, this was not sufficient in helping address the patriarchal relations within the organisation given their rootedness in society at large. The NCA draft constitution substantially addressed the ways of empowering women whilst its own constitution allowed for special processes in the election of women. One respondent stated that women representation in the NCA was about 35%. McCandless (2011) notes that the NCA strategy of mass action in the context of violence tended to attract young men and deter women from participating in NCA activities.

Although the NCA constitution provided for a gender committee of the Taskforce and had officials responsible for gender issues at the national and regional levels as well as within its secretariat, the organisation had no gender policy that could inform gender mainstreaming on its structures, processes and programmes. The NCA quarterly report for 2006 also stated that it continued to operate a quota system designed to ensure that women actively participate in the organisation's decision making structures (Lumina 2009). The 2009 NCA evaluation found out that women constituted 25% of the organisation's leadership at all levels and concluded that the under representation of women results in limited space for women in the decision making within the NCA (Lumina 2009).



The NCA has endeavoured to enhance equal representation of women and to that end they held a number of workshops specifically focused on gender mainstreaming and youth issues. In interviews with NCA members and staff, the 2009 evaluation found out that the concept of gender was not well understood by the various structures (Lumina 2009). It appeared to be understood as the promotion of women rather than as referring to how socially constructed roles affect the expectations, rights, power and opportunities of men and women. Furthermore gender mainstreaming appears to be understood as equivalent to assigning the gender function within an organisation to women as opposed to a process of creating knowledge about impacts and awareness of and responsibility for gender. Thus all gender chairpersons of regional and national levels were all women. The evaluation found that none of the gender chairpersons appeared to understand the concept of gender and that a number of women assigned with the responsibilities of gender chairpersons had little formal education with little capacity to understand this complex concept (Lumina 2009).

The situation does not seem to have changed by 2013, with some respondents to this study alluding to the fact that they were gender committees positions held by the women at all levels of the NCA structure. Former workers in the secretariat said the subsidising of the levels of violence from 2009 had encouraged more and more women to become actively involved in NCA activities. Despite the financial problems that seem to have dogged the NCA, some respondents said some of the NCA demonstrations were now beginning to attract female activists attributing it to the success of the NCA gender workshops that were held across the country.

#### **4.5 The NCA and the donors**

Over the last years, scholars have begun to increasingly question about the structure and interests of alliances in the civil society as part of a wider political critique of liberalism and the nature, and purpose and efficiency of international interventions. It is often asked whether the associations are private or public, whether they are principled progressive and altruistically driven or represents simply another sphere of the neoliberal project. Such debates reflect the unresolved ideological tensions about the nature of civil society between the liberal, Marxist and Gramscian traditions and the increasingly critical African perspectives (McCandless 2011). Despite the contestations, the liberal perspectives of civil

society are widely hegemonic in international practice and are promoted by humanitarianism, development and democratisation. The western donor consensus that civil society is the autonomous force that can hold the governments accountable and the base upon which a truly democratic culture can be built has led to massive over-flow of funding for civil society. However this consensus narrowly interprets civil society as professionalised NGOs dedicated to the welfare advocacy and civil education work on public interests issues directly relating to democratisation rather than older established voluntary organisations.

This donor tendency has occurred in Zimbabwe and underlies the debated about the nature and role of civil society. Critical scholars have argued that civil societies developing in this liberal form reproduce material hierarchies and class inequalities. The now highly prominent neoliberal version of civil society is argued to facilitates the operation of both the state and the market, benefiting and marginalising actors differentially and giving rise to new social groups and forms of organisation as prompted by changing economic incentives (McCandless 2011).

In Zimbabwe, civil society has served to cushion the shocks of structural adjustment programmes and in the context of international financial institutions and donor promoted poverty reduction programmes, civil society organisations are becoming a means for stabilising rather than challenging the socio political status quo. In recent years scholars have begun to argue that civil society is much more complex and conceptualised phenomena. Civil societies that have developed in post-colonial Africa are thus not shaped by or a response to indigenous challenges and opportunities inherent in societies but rather reflect hybrid interests of both local and alien forces exacerbated by globalisation.

One of the criticisms that the NCA faced since its inception was that it was not home grown, that it was a front for the western governments to effect regime change in Zimbabwe. This criticism is very common amongst the civil society organisations in most countries in the south. McCandless (2011) notes that it is not fair and logical to assume that because donors are interested in the democratisation and development then civil society organisations cannot be genuinely interested in the same or that they cannot build strong constituencies around such concerns. The NCA's major donors have been mostly European donors. The

NCA relied exclusively on donor funding for its activities over the years. However there is no evidence to suggest that the NCA changed its programming to suit the donors and the NCA never diverted attention from its strategies in favour of international donors. According to some respondents the donors tried to influence the NCA to participate in the inclusive government's efforts to write a new constitution but NCA took a principled position and refused based on what its membership had said leading to some donors pulling out of the organisation. In fact on former member of the NCA Taskforce told this researcher that as early as during the CC, the NCA was pressurised by the United States Agency for International Development (USAID) to participate in the government process but refused leading to the loss of funding.

The government has been adamant over the years that the NCA was donor funded to effect regime change. The NCA activities during the period 2002 – 2008 fuelled this speculation because it is the period when NCA could engage in violent clashes with the police in demonstrations. It is also alleged that the NCA was again pressurised by donors to participate in the 2009-2013 Constitution Parliamentary Select Committee (COPAC) constitutional reform process and when they refused, donors started to pull out leading to the near bankruptcy of the organisation.

#### **4.6 The NCA and Oppositional politics in Zimbabwe**

Perhaps one of the most problematic areas in the history of the NCA was when it facilitated the formation of the MDC in 1999 together with other civil society organisations. Because of this relationship in the 2000 general elections, the NCA publicly encouraged its members to support and vote for the MDC. By doing this, the NCA failed to become an impartial civic body as required of a civil society organisation. When the government would continuously label it part of the oppositional forces bent on regime change, there was some truth to it. This had negative impacts in the relationship between the NCA and the government and such frosty relations persisted until the decision to transform the body into a political party in 2013. The decision to transform into a political party would also affirm the notion that civil society is political.

The cosy relationship between the NCA and the MDC would thaw later when the MDC joined the inclusive government. Furthermore the decision by the inclusive government to

let parliament take lead in the constitutional reform process riled the NCA and there was a bitter fall out with the MDC. The NCA accused the MDC of negating on the fundamentals agreed to for the re-writing the country's constitution that it should be people driven and led by civil society rather than by politicians. The NCA would later go on to campaign against the draft constitution and it is such mistrust of the MDC that led them to transform into a political party.

Almost all the respondents from the Ministry of Public Service and Social Welfare interviewed during this research agreed that one of the biggest undoing to the work of the NCA was its decision not to work in tandem with the government opting to work with the opposition. Thus in the eyes of government officials, the NCA was just an appendage of the opposition. One respondent argued that this could have been as a result of the organisation's fight for the rights and liberties of the people which fits into the western roles of civil society. One senior official stated that at various times the NCA would snub some meeting with the government or decide to go for a confrontational approach. Such a confrontational approach according to the government was not meant to achieve desired results but to please their western donors. The decision by the NCA to oppose every initiative to write the constitution was mentioned by two of my respondents as evidence enough that the organisation was not genuinely concerned with the agenda of the new constitution. Officials pointed to the refusal by the NCA to participate in the parliamentary constitutional reform process in 2011 when other civil society organisations participated as evidence enough that the NCA wanted the country to be in perpetual constitutional crisis.

Former members of the NCA however differed saying the organisation was the most principled organisation in the country and always ready to defend the general populace. These members mentioned the fall out with the MDC formations as evidence enough of their principled nature. According to these members it was only the NCA which was able to highlight the deficiencies of the constitutional process that was brought about by the political parties and that the results of the process where a highly defective constitution was forced onto the people by the political parties in 2013 was evidence enough to show that the NCA was not political but had a principled stance. Either way, the fact that the NCA decided later to abandon its civil society nature to form a political party gives credence that the organisation was very political from the beginning.

Supporters of the NCA have always viewed it as an organisation that represented the views and aspirations of the majority of Zimbabweans who wanted good governance and development in their country through a constitutional means that is driven and authored by Zimbabweans. Critics however, mostly represented by the government saw the NCA as a political front and puppet of the western countries formed with a specific agenda of effecting an illegal and unconstitutional regime change in Zimbabwe. To the government, the NCA was neither constitutional nor an assembly and the president once stated that the NCA was a one man organisation created to receive donor funds and without support of the majority of the people in the country.

#### **4.7 NCA programmes**

The sustained push for a new constitution reform process by the NCA contributed to an enhanced political commitment to constitutional reform process as reflected by Article XI of the Global Political Agreement (GPA) and the inclusive government's adoption of a timetable for constitutional reform. The main activities that the NCA undertook included embarking on massive civic education to raise popular awareness on the need for a new constitution and how that would help to resolve the country's socio economic development problems. Campaigns were undertaken through a range of constituency workshops focusing on gender and youths. A number of peaceful demonstrations and stay- aways were held in urban centres in order to exert pressure on the Zimbabwean government to accede to demands for a democratic constitutional order. The NCA also embarked on a publicity campaign through the issuing of press statements, holding press conferences, media interviews, newspaper advertisement and the distribution of fliers, placards, posters and banners.

The NCA also conducted training of facilitators to conduct grassroots workshops on the organisation's vision and mission. Some of the activities included grassroots civil education focused on the link between good governance and human rights, the NCA draft constitution, gender and youth issues, mobilisation for mass pressure, publicity and media campaign. Grassroots civic education was conducted through workshops, theatre and public meetings. Discussions centred around three issues of what is the constitution, what is good governance and how does the constitution contribute to it and what are human rights and

how are they protected and to what extent a new constitution will improve the human rights in Zimbabwe. The objective of these workshops was to mobilise the grassroots support for constitutional reform. Participants were drawn from the NCA wards and identified on the basis of interest, proximity to venue, demand and gender balance. A typical guideline for the facilitators to NCA meeting discussions was based on Table 4 below.

### **1. What is NCA?**

- Stress its non-partisanship
- Say when the NCA was formed.
- Membership of the NCA: individual and institutional.

### **2. What is the vision and mission of the NCA?**

- To understand the vision and mission of the NCA, you must understand the essence of a constitution. At this stage explain what a constitution is.
- What is the link between a democratic constitution and good governance and social progress and development?
- Emphasize the “people driven aspect” of constitution making: here refer to the 2000 referendum and why the NCA campaigned for a NO vote.
- Defend the NO Vote and criticize the government stance of:
  - (i) Claiming that in voting NO, Zimbabweans rejected an opportunity to get a new constitution.
  - (ii) Attributing the NO vote to the land cause.

### **3. What are the weaknesses of the current constitution?**

- Refer to, among other things:
  - (i) 17 amendments to serve the interests of the governing elite.
  - (ii) Presidential Powers.
  - (iii) Lack of accountability of the government.
  - (iv) Electoral framework.
  - (v) Narrow Bill of Rights.
- Under this section, refer to some of the provisions of the NCA Draft as comparisons.
- Where relevant, refer to constitutions of other countries in Southern Africa e.g. South Africa
- Illustrate how the weaknesses of the current constitution have had effects in practice e.g.:
  - (i) Referring to the 2000, 2002 and 2005 elections.
  - (ii) Abuses by the President.
  - (iii) Human Rights abuses showing lack of accountability by government.

### **4. What is the way forward?**

- a) Zimbabweans must continue to educate each other on the importance of a new constitution.
- b) Zimbabweans must prioritize the issue of a new constitution.
- c) Indicate the role of the NCA and its two main programmes:
  - (i) Civic education
  - (ii) Putting pressure on government.
- Explain and defend the NCA programmes of peaceful demonstrations.
- Explain the structure of the NCA and how ordinary people may participate in it.
- Say something about unjust laws like POSA.
- d) Link the NCA initiatives with other initiatives.
- e) Indicate the risks involved in the struggle for a new constitution.
- f) Invite people to join NCA.

Table 4: Standard Presentation by the NCA for a Grassroots Workshop/Public Meeting  
(Lumina 2009)

The gender and youth workshops that were held were aimed at ensuring the propagation of a gender sensitive constitutional reform agenda and utilising issues affecting gender and youth as a gate way to reach out to the broader mass of people with the constitutional reform agenda. The workshops were also focused on issues affecting gender relations and the youth in relations to the need for a new and democratic constitution for Zimbabwe. Other issues discussed included unemployment and the need for a constitutional framework that would guarantee the rights to health including access to treatment for those infected and affected by HIV/AIDS.

The main objectives for the NCA activities were to raise awareness about virtues and values of democracy, promoting civic responsibility and popularising the constitutional reform agenda. Around 2007, discussions also centred on the SADC initiated dialogue between ZANU PF and the MDC formations. The NCA organised a number of public meetings to afford the grassroots communities an opportunity to discuss the political, social and economic challenges that were afflicting the country so that the people can propose their own remedies to the crisis and in a way promoting participatory development. Such discussions and activities helped in maintaining the constitutional reform issue as a key agenda item in public opinion, forging a united front in the push for constitutional reform and upholding the critical role of civil society in ensuring public accountability and laying the basis for constructive engagement with the government and political parties.

Although the NCA embarked on a publicity campaign, government restrictions on the independent media negatively impacted on their campaigns. The country was also facing a general deteriorating socio-economic environment characterise by hyperinflation, high incidence of HIV/AIDS and this negatively impacted on the NCA activities. The existence of Public Order and Security Act (POSA) made it difficult to hold public meetings and demonstrations because the law gave the police powers to ban any meetings or any associations that they deemed to cause alarm and despondency. AIPPA also paralysed the operations of the media to a point of diminishing the media's role in the promotion and sustenance of democracy and development. By 2013, the NCA civic education was more focused on the Inclusive government constitutional making process which the NCA was opposed to, educating their members why the process was a deliberate ploy by politicians to hoodwink the general populace into believing that the process was above board.



Although the NCA was perceived to be an important actor in the constitutional reform process, there were some concerns relating to its governance and advocacy strategy. In particular concerns were raised on its failure to revise its advocacy strategies to enable it to engage more constructively with the inclusive government and other civil society partners in the context of the constitution making process provided for under Article XI of the GPA.

#### **4.7.1 The NCA and the post 2000 constitutional amendments**

The post 2000 period saw the country's constitution being amended four times. According to Ncube (2010) these changes were in one way or the other in favour of the policy positions of ZANU PF than the opposition or civil society. The NCA criticised these arbitrary changes to the country as elite and politician driven rather than people driven.

Constitutional amendment No 16 was passed in April 2000 in the aftermath of the 'No vote' referendum victory against the government sponsored draft constitution. The amendment allowed the state to compulsorily acquire land from the white commercial farmers and legalised the land invasions by the war veterans and landless masses. The amendment removed guarantees for the compensation of white commercial farmers whose land had been compulsorily acquired by the state for resettlement.

Constitutional amendment No 17 came into effect in September 2005. It vested the ownership of the land acquired through the Fast Track Land Reform Programme (FTLRP) into the hands of the state. It also barred the courts from presiding over any litigation cases against the acquired farms. This was in response to the former white commercial farmers who were contested against their evictions from their farms as well as the improvements that they had made on the farms. The amendment also created the Senate as an upper chamber of parliament.

Constitutional amendments No 16 and 17 were roundly criticised by the civil society as well as by the international community. Ncube (2010) also notes that the amendments were criticised for violating international law obligations including that of the African Union (AU). The civil society including the NCA also criticised the reintroduction of the senate as a ploy to waste meagre resources and reward politicians that had been rejected by the electorate in the general elections held earlier in the year. It was the disagreements over the

participation in the Senate elections that led to the split of the MDC and would have severe repercussions on the credibility of the MDCs as an alternative to the ZANU PF government.

Constitutional amendment No 18 was passed in September 2007 with the support of both the ZANU PF and MDC formations in parliament. It formalised the holding of harmonised elections for both members of parliament, senate and presidential elections in Zimbabwe. It also made provisions that for anyone to be declared a winner in a presidential election, the candidate must get at least 51% of the vote. The amendment also provided for some loosening of some of the repressive laws that had been passed earlier. In general the amendments in repressive laws were compatible with the generally accepted norms in a democracy. To the chagrin of the NCA, the amendment called for the re-writing of a new people driven constitution only after the harmonised March 2008 general elections. The NCA criticised more especially the MDC formations for abandoning what they had been fighting for all along since the formation of the NCA by supporting the amendments in parliament. The NCA further accused the MDC formations of betraying the struggle for social change as well as for failing to address the issues of democratising structures and institutions needed for effective and good governance. This amendment opened fissures between the former allies in the NCA and the MDC formations with the NCA announcing that they were severing ties with the MDC formations. The MDC formations defended the amendment as a confidence building measure in the context of the inter-party political dialogue that was taking place between the two MDC formations and ZANU PF that were being mediated by former president Thabo Mbeki.

Constitutional amendment No 19 was passed in September 2008 in order to create for the provision of the inclusive government following the signing of the GPA on the problems facing Zimbabwe on the 15<sup>th</sup> of September. It provided for a power sharing inclusive government between ZANU PF and the MDC formations. The amendments were in the following respects; to pave way for the creation of the prime minister and deputy prime ministers office, to substitute the chapter on citizenship, to make specific provision for the appointment and functions of the committee of parliament known as the Committee on Standing Rules and Orders, to provide for the appointment for the chairperson of Zimbabwe Electoral Commission, and of the members of the Anti-Corruption Commission and the Zimbabwe Media Commission. The NCA again criticised this amendment arguing that the

September 15 2008 GPA reached by the country's political parties was a deal reached through trickery and forgery aimed at throwing away the people's victory in reference to the March 2008 general elections. The agreement was meant to sanitize the ZANU PF regime whilst reducing to a fool, the MDC victors of the elections.

#### **4.7.2 The NCA and the Global Political Agreement (GPA)**

On the 29<sup>th</sup> of March 2008, Zimbabwe held its harmonised elections using the Lancaster house constitution as amended. The results of the elections were withheld for close to two months before they were eventually released. The overwhelming public perception in the country was that the election results were heavily manipulated in order to prevent the announcement of the outright winners (Zembe and Sanjeevaiah 2013). Because of the constitutional requirement that in the event that the results of the presidential election were less than the 51% threshold of the total votes cast, then a presidential runoff between the two candidates who secured the highest number of votes would be conducted within ninety days of the announcement of the results. A rerun or presidential election runoff was held on the 27<sup>th</sup> of June 2008. It was during the period in the run up to the June 27 election that the country experienced a bloody and violent campaign. The period animated state sponsored political violence unprecedented in the history of the country.

In general it can be noted that the post 2000 referendum on the draft CC constitutional reform spawned a multi layered and deep seated crisis that later prompted SADC to actively intervene in search of a viable but elusive solution to the protracted and worsening crisis. The SADC negotiating team headed by former South African president Thabo Mbeki forced the contending parties to a compromise and following rocky negotiations the three principals (leaders) of the political parties with seats in parliament (ZANU PF, MDC and MDC-T) signed the GPA which mandated the formation of an inclusive government/government of national unity. The GPA was signed on the 15<sup>th</sup> of September 2008. The inclusive government was put into effect by the constitutional amendment No 19 in February 2009, just in time for the formation of the inclusive government.

The GPA was a political treaty that sought to define the strategic direction of the country. The signatories agreed to create a genuine, viable, permanent, sustainable and nationally acceptable solution to the Zimbabwean crisis. It also sought to resolve once and for all the

prevailing political and economic situation as well as aiming to chart a new political direction for the country. One of the flagship provisions of the GPA was Article XI which acknowledged the fundamental right and duty of the Zimbabwean people to make a constitution for themselves in a process that is inclusive and democratic.

The GPA was born out of pressure from mostly civil society under the banner of the Save our Zimbabwe campaign as well as the stalemate caused by the results of March 2008 harmonised elections and the inconclusive presidential elections. The campaign raised pressure about the situation in Zimbabwe internationally. It was partly through the pressure that the AU and SADC decided to get actively involved in the Zimbabwean crisis by mediating for a political solution that would bring all the contesting political parties into forming the inclusive government. The campaign was premised on the delay in announcing the March 29 elections result as well as the state sponsored and organised violence and intimidation against the opposition and civil society. The civil society came up with a broad frame work for collaboration between themselves, mass civic education campaign, increased information dissemination to remote areas through existing structures as well as a non violent social action (Ncube 2010).

The campaign aimed at affirming the election of March 29 as the only legitimate expression of the people of Zimbabwe, to promote peace and tolerance amongst Zimbabweans, demanding the demilitarisation of the political and electoral process and expressed civil society's willingness to mobilise citizens to defend their vote and human dignity. The campaign managed to increase the regionalisation and internationalisation of the Zimbabwean crisis. The international community was called upon to assume leadership, responsibility and obligations to promote peace and human dignity and alleviate the gross suffering of innocent citizens. The campaign catalysed and amplified regional and international condemnation of the Zimbabwean regime (Ncube 2010).

Having fought very hard for the internationalisation of the Zimbabwean crisis at a critical point in history, the NCA felt let down when the AU and SADC initiated talks left them out of the picture. The SADC facilitated talks only brought to the table ZANU PF and the two MDC formations. The NCA together with other civil society organisations had agreed with the MDC formations that the basis for any inter party talks to resolve the Zimbabwean crisis

should be premised on a new constitution before the 2008 harmonised elections. The NCA was riled especially by Article XI (see Table 5) of the agreement that dealt with the need for a new constitution. In as much as the NCA agreed on the need of a new constitution they felt the process agreed to by the political parties was self serving and was not people driven. The NCA condemned their former allies, the MDC formations for agreeing to a process that was contrary to the principles of the NCA. As a result the NCA rejected the COPAC process arguing that it was not people driven but was more of a political settlement between ZANU PF and the MDC formations. The fact that the process was led by politicians was a very worrisome development since politicians are concerned about power. The NCA argued that the supposedly outreach consultations with the people were a mere waste of resources since ultimately the politicians would determine what to do with the document. The bickering over the COPAC draft later would act to vindicate the position of the NCA as in the end the voices of the people were discarded in favour of a negotiated constitution between the parties in the inclusive government.

#### **4.7.3 The Constitution Parliamentary Select Committee (COPAC) Constitution Making Process**

At the heart of the GPA was Article XI that mandated a commitment by the three parties to the agreement (ZANU PF, MDC-T and MDC) to develop a process in which a new constitution should be agreed upon and to be followed by new elections. The successful conclusion of the constitutional reform process was going to complete the country's return to a new democratic dispensation premised on good governance and development. Article X1 of the GPA had provisions for the drafting of a new constitution and the establishment of COPAC (See Table 5). The political parties involved, that is ZANU PF and the MDC formations agreed to appoint a Select committee of parliament comprised of representatives of the political parties bounded by the GPA. The terms of reference for the select committee included holding public hearings and consultations as it deemed fit in the process of public consultation over the making of the new constitution.

## **ARTICLE VI OF THE GPA**

### **6. Constitution**

Acknowledging that it is the fundamental right and duty of the Zimbabwean people to make a constitution by themselves and for themselves; Aware that the process of making this constitution must be owned and driven by the people and must be inclusive and democratic; Recognising that the current Constitution of Zimbabwe made at the Lancaster House Conference, London (1979) was primarily to transfer power from the colonial authority to the people of Zimbabwe; Acknowledging the draft Constitution that the Parties signed and agreed to in Kariba on the 30th of September 2007, annexed hereto as Annexure "B"; Determined to create conditions for our people to write a constitution for themselves; and Mindful of the need to ensure that the new Constitution deepens our democratic values and principles and the protection of the equality of all citizens, particularly the enhancement of full citizenship and equality of women.

6.1 The Parties hereby agree:

(a) that they shall set up a Select Committee of Parliament composed of representatives of the Parties whose terms of reference shall be as follows:

(i) to set up such subcommittees chaired by a member of Parliament and composed of members of Parliament and representatives of Civil Society as may be necessary to assist the Select Committee in performing its mandate herein;

(ii) to hold such public hearings and such consultations as it may deem necessary in the process of public consultation over the making of a new constitution for Zimbabwe;

(iii) to convene an All Stakeholders Conference to consult stakeholders on their representation in the sub-committees referred to above and such related matters as may assist the committee in its work;

(iv) to table its draft Constitution to a 2nd All Stakeholders Conference; and

(v) to report to Parliament on its recommendations over the content of a New Constitution for Zimbabwe

(b) That the draft Constitution recommended by the Select Committee shall be submitted to a referendum;

(c) that, in implementing the above, the following time frames shall apply:

(i) the Select Committee shall be set up within two months of inception of a new government;

(ii) the convening of the first All Stakeholders Conference shall be within 3 months of the date of the appointment of the Select Committee;

(iii) the public consultation process shall be completed no later than 4 months of the date of the first All Stakeholders Conference;

(iv) the draft Constitution shall be tabled within 3 months of completion of the public consultation process to a second All Stakeholders Conference;

(v) the draft Constitution and the accompanying Report shall be tabled before Parliament within 1 month of the second All Stakeholders Conference;

(vi) the draft Constitution and the accompanying Report shall be debated in Parliament and the debate concluded within one month;

(vii) the draft Constitution emerging from Parliament shall be gazetted before the holding of a referendum;

(viii) a referendum on the new draft Constitution shall be held within 3 months of the conclusion of the debate;

(ix) in the event of the draft Constitution being approved in the referendum it shall be

gazetted within 1 month of the date of the referendum; and (x) The draft Constitution shall be introduced in Parliament no later than 1 month after the expiration of the period of 30 days from the date of its gazetting.
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Table 5: Article X1 of the Global Political Agreement

The COPAC draft was a product of two processes that is the outreach process in which the people were asked their views on what they wanted on the draft as well as the second process of negotiations among the three political parties in the inclusive government. The national objectives of the constitution were defined as good governance, national unity, peace and stability, fostering fundamental rights and freedoms, good and sound foreign policies, national development, empowerment and employment creation, food security, culture, gender balance, rights of children, youths and the elderly. According to the parties in the inclusive government, a new constitution was ideal to entrench democracy, good governance and upholding the rule of law. Unlike the CC in 1999 that led the constitutional reform process, the process now was led by COPAC comprising 25 members from each of the political parties in the inclusive government. The COPAC outreach process managed to hold a total of 4 943 meetings in each of the country's 1 957 wards. Although the COPAC teams leading the consultative process tried to ensure credibility, inclusiveness, transparency and accessibility there were reports of incidents of violence and intimidation that could have created an environment of fear thus preventing the full participation of citizens in the process. There were also reports that the political parties in the inclusive government coached their supporters on what to say during the outreach sessions.

Critics of the COPAC process led by the NCA argued that the process had taken too long (36 months) amid severe bickering between the parties thereby failing to dispel the growing public perception that it was a largely wasteful exercise. Despite calls for a non partisan process, the three political parties in the inclusive government were central to the process with the political parties deciding on the secretariat in order to guard against their interests. COPAC appealed to donors and just as during the ill-fated 1999 constitutional reform process, civil society was again divided over the process. Some saw an opportunity after almost a decade of violence to participate and try to change things. The NCA argued that it was against their principles and decided to boycott the process. The problems with the COPAC draft were due to the historical and political circumstances within and around which

it was conceived. It got its mandate from Article XI of the GPA therefore suffering from the problem of political partisanship. At one time the COPAC lead drafters could not start work on the final version of the draft constitution because issues had to be agreed by a plethora of structures borne out of the said tri-partisanship for example there were 3 Co-Chairs of COPAC, COPAC Select committee of parliament, COPAC Management committee and the GPA principals.

The COPAC constitutional making process managed to produce its heavily compromised draft constitution that was negotiated in secret by the political parties in the GPA. The negotiated compromised partisan draft constitution caused irreconcilable sharp disagreements between the three political parties that led to one of the parties to produce its own draft constitution based on 200 amendments that it proposed should be included into the COPAC draft. On the 21<sup>st</sup> – 23<sup>rd</sup> of October 2012, the COPAC held its 2<sup>nd</sup> All Stakeholder's Conference where the proposed amendments were submitted, considered and adopted (Zembe and Sanjeevaiah 2013). The principals to the GPA further instructed their subordinate members of parliament attending the 2<sup>nd</sup> All Stakeholders Conference to surrender the amended COPAC draft constitution to them so that the principals could scrutinise it for further amendments before a referendum on the document could be organised. A referendum to the COPAC draft constitution was conducted on the 16<sup>th</sup> of March 2013 and 3 079 966 people voted for the draft while 179 489 voted against it. The COPAC draft constitution was enacted by the GPA parliament replacing the colonial Lancaster house colonial constitution as the new constitution of Zimbabwe of the 22<sup>nd</sup> of May 2013.

The COPAC draft constitution introduced a fundamental departure from the Lancaster House constitution by way of providing a wider bill of rights with mechanisms to ensure the enforcements of these rights. There were additional limits to the presidential authority with the legislature and the judiciary empowered to check and review the decisions made by the president. Overall, the COPAC draft seemed to substantially attempt to address the pertinent constitutional issues that have been at the epicentre of the Zimbabwean crisis. The draft is hoped to fundamentally positively influence the quality of governance in Zimbabwe.



#### **4.7.4 NCA and the 2013 Referendum**

The four year constitutional making process that culminated in the draft constitution was characterised by bitter and at times violent inter party struggles with each party seeking supremacy of its own preferences. However the sharp contestations suddenly and surprisingly evaporated when the party principals agreed on the contents of the draft on the 17<sup>th</sup> of January 2013. This was against all wind of public expectation. The happy consensus and cooperation had the perverse effect on robbing the referendum process and its campaign the popular dynamism and enthusiasm (ZESN 2013). Most people questioned the need for a referendum especially against the backdrop of severe shortages afflicting the country. More so the fact that the process that was supposed to take only 6 months had gone on to take 3 years with so much spending infuriated the people. Even the principals seem to have taken it for granted and gave the referendum campaign one month only before the referendum.

This prompted the NCA to take the government to court challenging the short period of campaigning and seeking a two month extension. The clearly unjustified decision for a short campaign period pumped some wind into the NCA 'no' vote campaign. This was part of NCA strategy despite their ongoing vote 'no' campaign. The court dismissed the case but acknowledged some points the NCA had argued for example the issue of time frame.

According to one of the senior NCA official during the March 2013 referendum, Takura Zhangazha, the 2013 vote 'no' campaign vote count was to demonstrate both a national presence as well as an indication that despite all the politics of the MDCs and ZANU PF, there were at least a quartet of million Zimbabweans who are amenable to a third way in the country's national politics (Zhangazha 2014). The court challenge by the NCA and the 'no' vote campaign actually had an effect in raising awareness which persuaded more people to go and vote for their respective preferences (ZESN 2013).

After the referendum results were announced, the NCA rejected them arguing that the notice period given to people to go through the draft had been inadequate and that the government only provided about 80 000 copies which was clearly inadequate. NCA also argued that 95% of the voters had not seen or read the draft and knew nothing about its contents but simply voted because they were following orders from their political leaders.

The poor turnout was taken by the NCA to mean an endorsement by the people that they did not care about the draft. To that effect, NCA argued that the draft was undemocratic and that a constitution does not become people driven merely on account of people being driven to meetings and being told what to say as was the situation during COPAC outreach meetings. As a democratic principle, the NCA thought it better to stay the path of a people driven constitution even against the backdrop of literally being financially resource-less against the donor driven COPAC constitutional making process.

#### **4.8 Was the NCA an elitist organisation?**

It has been argued that civil societies are elitist organisations that claim to represent the people when in fact they are representing themselves. Part of the critique has been the fact that the majority of the people reside in rural areas and are mostly excluded as most civil society organisations are urban based. The NCA was an urban based organisation and Kagoro (2001) notes that at its formation, the NCA leaders and activists took to the communities pre-determined packages. In this way their operations were top down approach. The NCA made efforts to target Zimbabwe's rural population especially during the 'no' vote campaign. They managed to set up structures in the rural areas and although these structures were destroyed during the near decade long of violence (2000 – 2008), some of the respondents to this study attested that they were still visible and even some structures existed in the rural areas.

In fact the decision to turn the civic body into a political party came from mostly those structures. However despite efforts to reach out the people in the rural areas, it must be noted that the operating environment in rural areas continued to narrow and the government continued to brand the NCA as an elitist, business, white and imperialistic. Although in the early days the NCA meetings were held in towns and hotels, as time went on the meetings expanded to rural areas and growth points. As explained earlier, with time the NCA transformed itself into a grassroots membership organisation populated with more activists than academics. However critics led by the government continued to label the organisation elitist. Probably this was because of its chairperson who was a robust intellectual. Somehow people thought the chairperson held all the sway because intellectually no one could challenge him since he was surrounded by mostly activists.

#### **4.9 NCA transformation into a political party**

The NCA held its congress of the general assembly from the 26<sup>th</sup> to the 28<sup>th</sup> of September 2013. This general assembly resolved to transform the civic body into a political party. In an interview the NCA chairperson and interim chair of the political party, Dr Lovemore Madhuku stated that the reason for their transformation is that the membership was convinced that at this point and time it was the best way for the NCA to contribute to the development of the country. He added that for the past 16 years the NCA had made contributions to the political discourse as a civic organisation and that the decision to transform into a political party was guided by the goal of contributing to the development and prosperity of the country. The party was to pursue social democratic ideals with a pan Africanist thrust. The special congress resolved to continue the constitutional journey by expanding the mandate of the organisation into one that will seek political power.

However before the NCA ship could begin to navigate the tumultuous waters of the Zimbabwean politics, it has been hit by desertions by some key members. Those who have resigned have sighted ideological differences, stating that the NCA being born out of frustrations in both ZANU PF and the MDC formations should have been different in how they operate. This misunderstandings grew from the fact that the NCA has since its transformation been participating in by-elections without first organising their structures and holding an elective congress. One deserter noted that the NCA needed a leadership that understands what it stands for, and that the country needs a much more conscientious leadership than the one being demonstrated by the ruling party.

From the interviews carried out during this research, the decision to form a political party does not seem to have had support. Most respondents said the country had too many political parties and for the NCA to join the fray would give ZANU PF victory in future elections. They argued that the oppositional forces were busy fragmenting instead of coming together to form an alliance to topple the ruling party. It would seem personal differences are affecting the oppositional forces from coming together. Respondents were of the opinion that the NCA should have continued as a civil society organisation and become a constitutional watchdog. In that way they would continue to educate the masses about the newly adopted constitution rather than to leave the work to the government.

Respondents from the government said there was nothing peculiar about NCA'S transformation as they had always held the view that the NCA was dabbling in politics. Either way the transformation of the NCA into a political party destroyed the gains that civil society had made in Zimbabwe's socio-economic transformation and casts doubts on the role of civil society organisations in developing countries.

#### **4.10 Conclusion**

The post 2000 NCA emerges together with others to try to transform the hegemonic social order of the state by re-articulating it in accordance to its vision of a new social order (Ncube 2010). This resistance to state hegemony and its view of a ZANU PF monolithic social order took many forms for example there was a creation of a counter block around the opposition MDC and the governance and human rights civil society that sought to compel society to consent to the common sense of the liberal ideology rooted in a people driven constitution, respect for property rights and the rule of law. There was also the strategy of delegitimizing the state through the campaigning and supporting sanctions against the ruling regime.

Although the NCA tried to subvert the repressive laws that had been passed by the government prohibiting gatherings and demonstration by continuing to hold street demonstrations, these were ruthlessly quashed by the police further straining the state-civil society relations and even dividing the civil society over the appropriateness of such strategies in engaging the state.

The constitutional discourse that culminated in the referendum in 2000 raged on during the course of the Zimbabwe crisis and became the centre of the political reform process under the coalition or inclusive government that came into effect in 2009. According to Ncube (2010) the discourse of a people driven constitution was informed by the classical debate on whether the law left at the whims of the state is promotive or inhibitive of a democratic society. The NCA was founded on a non partisan principle although its top leadership believed that a mutation of the movement into an alternative opposition political party to wrestle power from ZANU PF would realistically pave way for a fuller address of the governance conundrum (Kagoro 2004). It is clear therefore that the birth of the

constitutional movement as a counter hegemonic strategy was linked to a new thinking about the possibilities of changing the ZANU PF regime.

According to Dorman (2003), the constitutional debate in Zimbabwe provided a window through which to examine the ambiguity and complexity of state society relations. The constitutional debate provided a forum where there was more open political debate than at any other time in the history of the country. A regime previously based on demobilisation, de-participation attempted to respond to the demands from civil society by capturing the process of inclusive consultation (Dorman 2003). The government's politics of the early years of independence was rhetorically supported by a discourse that emphasised reconciliation and unity, development and nationalism in a complex mixture of policy and symbolism (Dorman 2003).

In order to achieve the goal of development, all groups had to work together in this early post independence rhetoric in unity and under the umbrella of the ruling party. Churches, unions and other groups were reminded again and again that inclusion was the route to peace and prosperity and the undoubted importance of bringing development to the new nation and the success of the developmental policies reinforced and legitimised the message. By simply bringing up the issue of the constitution and encouraging public debate, the NCA catalysed and regularised a debate that until then had had no formal place in the public domain. The NCA capitalised on both the latent critique of the government and the newly expanded independent media.

## **CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS**

### **5.1 NCA Strategies in the fight for a new constitution**

The NCA was founded to lobby the government for a new constitution through a people driven constitutional reform process but with time they adopted some radical resistance strategies that were a response to the way the government reacted. At the beginning the government accepted the need for a home grown constitution and agreed to set up a constitutional review commission. However the NCA refused to participate arguing that the commission was dominated by one political party (ZANU PF) and that it was also at the mercy of the president who could alter the final draft. It would thus seem that the NCA had some principles of their own which they did not want to compromise even if it meant being on a collision course with the government as well as the donors. However this could have been a lost chance as events later showed that the country had to go for another decade to have a new constitution that was not in any way democratic or people driven in its making.

During the post referendum period, the NCA's primary strategy was that of mass action in different manifestations such as protests and stay-aways. The violence that engulfed the country following the 'no' vote referendum in 2000 accompanied by land invasions by the war veterans and landless rural peasants made it very difficult for the NCA to penetrate the rural areas. The government dealt with all forms of dissent in a heavy handed manner and it became very difficult for the NCA to protest in the streets. Furthermore, the failure by the NCA to embrace the necessity of the land reform in the aftermaths of the land invasions gave credence to claims that civil society's neoliberal views are anti-state and nationalist development especially redistributive programmes.

After the NCA AGA in 2000, the NCA members vowed to undertake a confrontational approach if dialogue failed. Indeed the government was no longer in the mood to dialogue with the NCA accusing it of being a puppet organisation. In 2001, the NCA held an all stakeholder conference meeting to approve and adopt the NCA draft constitution for the country. The conference adopted the draft and resolved to use every form of legitimate mass pressure to force the government to adopt it as the country's constitution. From then

on the NCA embarked on a two pronged approach, first to get the draft viewed by the government and put it to a referendum and secondly to force the government to revisit the constitutional issues by agreeing to a process to rewrite the country's constitution. The government through the minister of justice refused to meet the NCA insisting that it had no time to entertain a foreign funded draft constitution. The government's position was that the NCA's opinions and programs were against the interests of the country.

At first the NCA began the process of trying to force the government through the courts. In the courts, the NCA was frustrated further as their cases were either thrown out or postponed indefinitely. To counter the legal process, the NCA organised civil unrest especially crafted to oppose laws that were being proposed by the government. Laws such as the Electoral Bill that meant to ban local independent monitors and forbid non-governmental organisations from conducting civic education on electoral matters, the Public Order and Security Act (POSA) that outlawed any form of public gatherings and the Access to Information and Privacy Act (AIPPA) that aimed to curtail access to and publication of information were used as a rallying point by the NCA. In March 2002 both POSA and AIPPA were passed into law dealing a massive blow on civic organising, mobilisation, freedom of assembly and rights to protest. The NCA continued to resist these laws, mobilising and carrying out street protests. Most of these protests would be carried out spontaneously so as to circumvent the law enforcement authorities. The government ruthlessly dealt with these protest with the police beating up and arresting the protestors resulting in the numbers of those willing to participate in NCA activities dwindling with each protest. The NCA continued to get court injunctions but those had little effect on the police actions. Eventually as the economic crisis deepened the NCA would no longer attract meaningful crowds but to their credit they continued to protest. The strategy then it would seem was to try and raise NCA profile internationally as well as to continually expose Zimbabwe on the international scene. One respondent alluded to the fact that it was the NCA which managed to put and sustain Zimbabwe's deepening crisis of governance at the international stage.

The NCA also partnered with other civic organisations such as the ZCTU to undertake protests. At one of those protest that was dubbed a prayer meeting, the police broke up the meeting arrested and severely assaulted the leaders of the NCA, ZCTU and MDC. This was met with an international outcry and SADC began to initiate the inter-party dialogue that

culminated in the inclusive government of 2009. Some interviewees felt that the reasons for poor turnout at NCA protest marches were due to poor consultation among the stakeholders. Others felt that the NCA profile was no longer appealing to the masses who had grown frustrated by the economic meltdown in the country. As the economic situation worsened in Zimbabwe, a number of people left the country and according to the NCA this affected their membership as well. It was now difficult to organise and mobilise for street protests as those who had remained were demoralised and recruiting a new energy was a challenge.

At the height of the economic meltdown, the NCA urged the public to protest regularly and consistently every week until a resolution to the political crisis engulfing the country is found and implemented. The protests also included a call for a transitional arrangement or authority with the mandate to see the immediate redress of the humanitarian and economic crisis and facilitating the writing by the people of a democratic constitution. Once a democratic constitution was in place, elections could be held in a free and fair manner to elect the country's political leadership under the terms of the envisaged new constitution.

The strategy of alienating institutional members from the NCA seems to have backfired. The organisation failed to benefit from the other organisations' capacities in the different areas of relevance to the constitutional reform process. In the end, the NCA had to fight a lone battle with the government where they became increasingly isolated and therefore easy targets for rebuke and constant attack from the government. As noted in the later years the NCA suffered from deep financial difficulties with the pulling out of most of its donors and this had a negative impact of its programmes, a situation which could have been avoided if they had institutional members as programmes and activities could be harnessed.

The NCA and government led constitutional review of both 2000 and 2013 debate catalysed a broad set of questions about the role of NGOs/civil society and their relationship with the state. The existence of the NCA challenged the previously dominant rhetoric and practice of the state which assumed that it must initiate and control such consultations. The government tagged the NCA as political, foreign funded and anti-unity. The NCA was also accused of failing to support national consensus building and of disrupting the national process especially when it refused to participate in both processes of 2000 and 2013.



However, it would seem that the confrontational attitude of the NCA clouded its judgement on its advocacy. The period from 1999 after the formation of the inclusive government offered a political environment that had a greater opportunity for constructive engagement between civil society and the government. Thus the NCA's hard-line stance undermined serious efforts to make some meaningful contributions to the constitutional reform process. By doing so they risked being made redundant and failing to achieve its long time goals and this could be the reason why after the adoption of the new constitution in 2013, the NCA decided to abandon the civil society status by transforming into a political party.

## **5.2 Perceptions on the NCA**

There is a general agreement among various stakeholders that the NCA contributed to the raising of the awareness of constitutional issues and human rights. Respondents in this study agreed that the NCA had raised public awareness on good governance premised on the need for a new people driven constitution. The respondents further noted that the NCA contributed to the enhancement of public awareness of constitutional issues. There was a general feeling among respondents that what had seemed a taboo of people openly questioning the way they are being governed had been made common talk among the people. In response to the question on the respondents' own assessment of the NCA's contribution in raising public awareness of constitutional issues as a baseline for good governance and development, 60% of the respondents noted that the NCA's contribution was excellent, 28% said very good, 10% good and 2% said it was bad as illustrated by the Table 6 below.

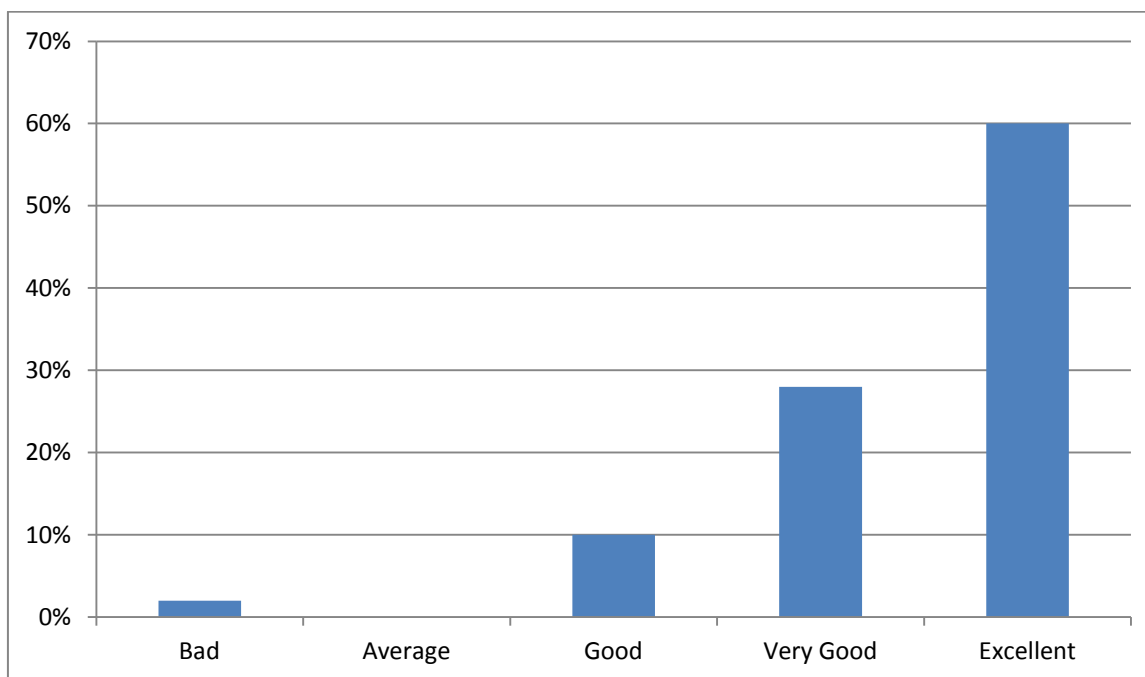


Table 6: NCA's contributions to the public awareness on the role of constitution in development and good governance.

Although most respondents credited the NCA's role in raising the awareness, the researcher could not ascertain for sure if the same picture exists in the rural areas. There was also a general perception that the NCA should have remained as a civil society organisation rather than venturing into politics by converting into a political party with most respondents lamenting that the gains made in the past fifteen years could be eroded as there was no one to act in filling that role. Some respondents felt that the reason the NCA had converted into a political party was because they had been too rigid and failed to appreciate change in strategies especially after the coming in of the inclusive government. Surely there were opportunities offered by Article X1 of the GPA to take the agenda of constitutional reform forward.

It is important to caution that the level of awareness on constitutional matters in Zimbabwe cannot solely be attributed to the NCA because there are still some organisations that have been working on the subject. The role of political developments in the country can also not be under estimated as they have also played an important role in keeping the issue as a national agenda. However there is no doubt that the NCA was the leading light in constitutional reform in the country since its formation and has featured prominently in the mass media.

Findings of the Evaluation of the NCA in 2009 indicate that there was a widely held perception that the NCA had a tremendous contribution to the raising of the awareness of constitutional and human rights issues in Zimbabwe (Lumina 2009). Most respondents agreed that the NCA had a big role and could have continued to be an independent watchdog on constitutional matters and the implementation of the new constitution especially the realignment of laws to the new constitution. Many felt that the NCA had a role after the adoption of the new constitution through an inclusive and participatory process.

### **5.3 Effectiveness of the NCA**

The NCA's enduring campaign for constitutional reform contributed to an improved political commitment to the constitutional reform agenda as reflected by Article XI of the GPA and the time frames for a new constitution. The fact that Article XI acknowledged the need for a people driven and democratic constitutional reform process as demanded by the NCA over the years shows that the NCA had been very effective in its work. The language and tone of Article XI of the GPA was reminiscent of that of the NCA's constitutional reform message. For example Article XI stated that 'it is a fundamental right and duty of the Zimbabwean people to make a constitution by themselves' and that the 'process of making this constitution must be owned and driven by the people and must be inclusive and democratic'. It further refers to public consultation in the constitution making process, the holding of an All Stakeholder's Conference and a referendum on the new draft for the people to approve it.

The NCA played a central role in engendering a sense of participatory democracy in Zimbabwe and as a result the people became in charge of their destiny. Of the people interviewed during this research 21% were of the view that the NCA's effectiveness was excellent, while 30% lamented the egocentric nature of the NCA though they were just average. They argued that the NCA had not been successful in being at the centre of constitutional reform as they would have wanted. 37% of the respondents said the effectiveness was very good arguing that the fact that the constitutional reform was on the agenda for such a long time was attributable to the NCA. 4% argued that the NCA was not effective at all because they were counterproductive in their activities, failing to work with

the state.8% said the effectiveness was good. The effectiveness perception of the respondents is shown on Table 7 below;

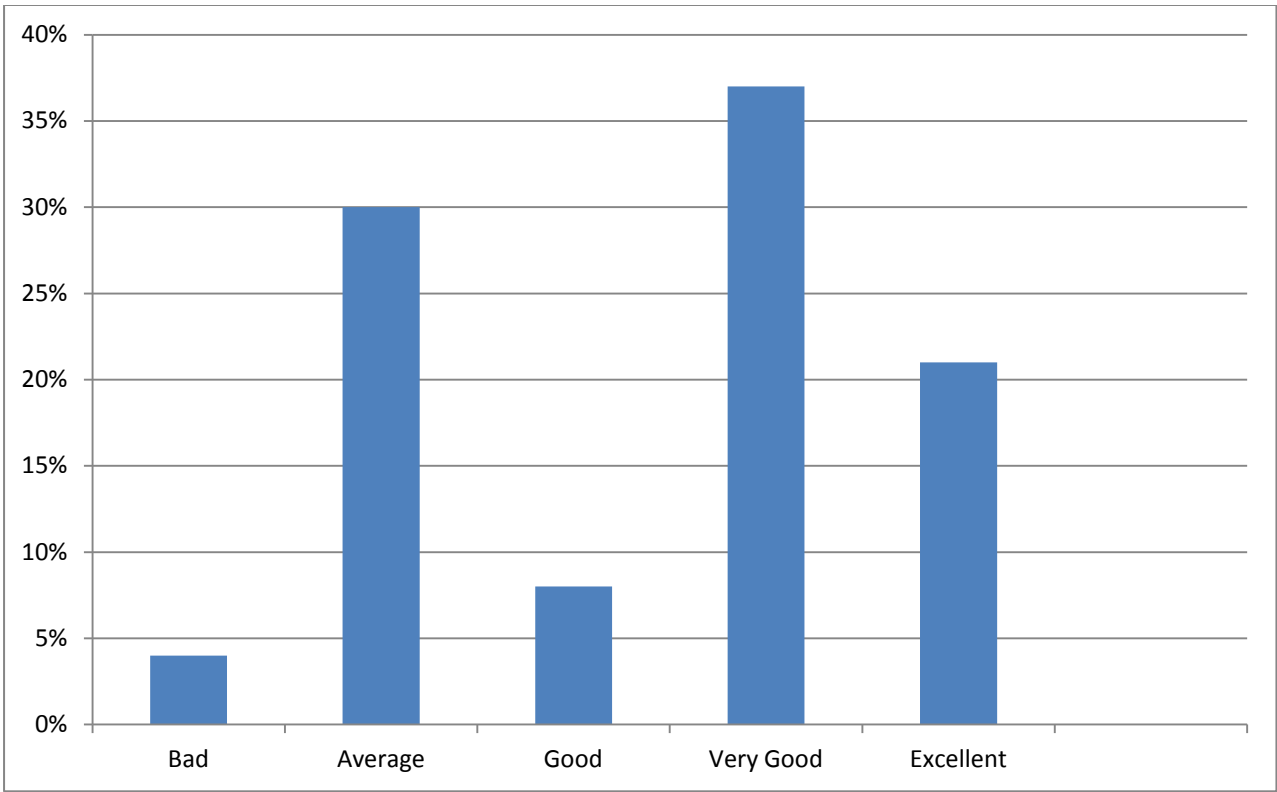


Table 7: Effectiveness of the NCA

5.4 Relevance of the NCA

The results of a survey carried out by the respected and independent opinion institute in Zimbabwe, the Mass Public Opinion Institute (2009) indicated that very few people were not aware of the existence of any other constitutional reform advocacy organisations other than the NCA. According to the research, 52% of the respondents had heard of the NCA while 48% had not heard of the NCA (MPOI 2009).

The NCA had the capacity to play a key role in the constitutional making process ushered in by the Inclusive government as well as playing a monitoring role for the new constitution through a participatory and inclusive process. Several people were concerned by the failure by the NCA to recognise the opportunities proffered by the inclusive government political environment. There was concern for the monopolisation of the constitutional reform debate and marginalisation of other organisations on the constitutional reform issue.

Nevertheless, the majority of the respondents stated that the NCA had been a relevant player in the struggle for good governance in Zimbabwe. 18% rated NCA’s relevance as excellent and argued that without the NCA, Zimbabwe would not have managed to have a new constitution. 40% argued the relevance as very good while 10% said it was good. 22% of the respondent thought the NCA relevance was just average while 10% said it was bad arguing that the government eventually managed to write a new constitution without the NCA and that everything was dependent on the government. The results are illustrated by the Table 8 below;

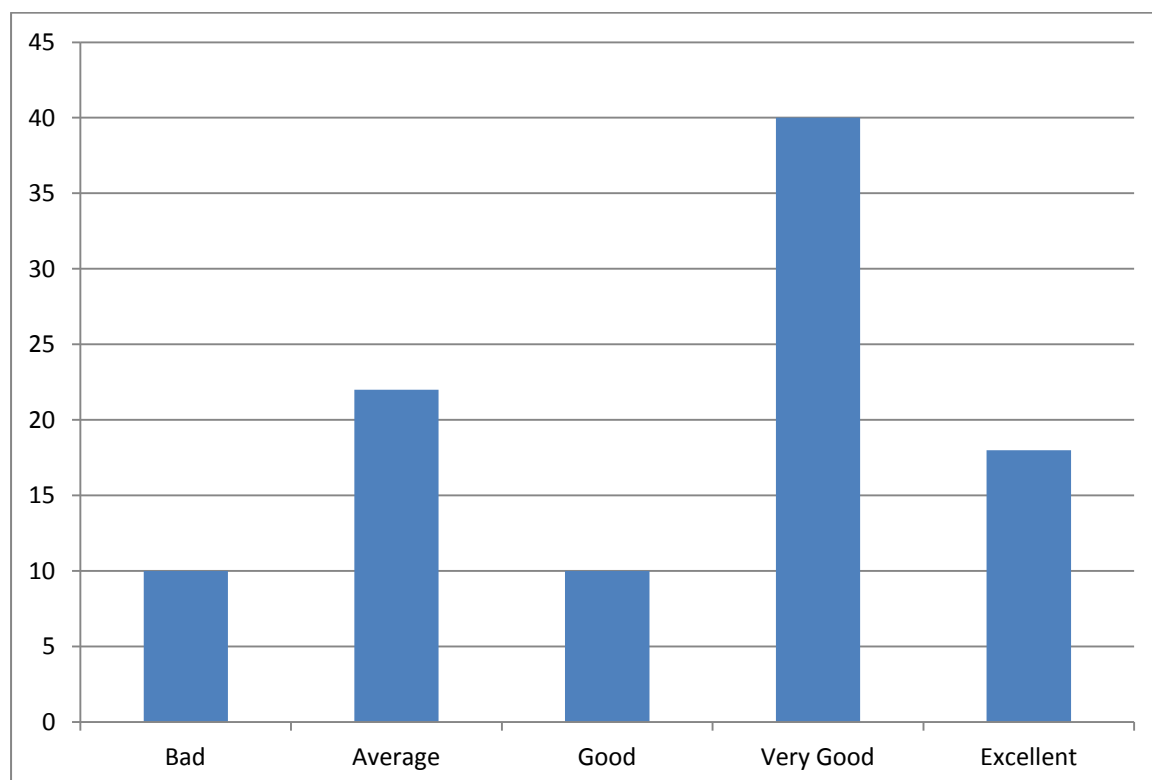


Table 8: Relevance of the NCA

### 5.5 Lessons from Zimbabwe’s Constitutional Making Process

Developing an effective procedure to prevent those with power from manipulating a constitution making process is a considerable challenge, one that can be helped by articulating the principles and mechanisms that govern such a process. Such articulation would have enhanced the process’ quality and increase the possibility of success. The process leading to the 1980 Lancaster House Constitution would have benefited from separating the constitution making process from the process of securing cease-fire as this

would have helped prevent the dominant and belligerent groups from having an overwhelming influence on producing the country's constitution. Such a separation enables or gives time for public participation where possible or where there is willingness to develop a vision for the future (Mdulo 2010).

The 1999 constitution making process failed because it came about as a government attempt to undercut while appearing to satisfy civil society as well as opposition demands. It was not part of a larger political renewal process. The government also lacked the credibility to spearhead the process, in that civil society demands for constitutional reform coincided with the emergence of a very strong opposition party in the history of the country. The 2013 COPAC constitutional reform though it succeeded was largely void of meaningful grassroots participation. The mere fact that the document had to be negotiated between the political parties involved in the process negating the views of the grassroots is proof enough that the 'people driven' process failed.

The Zimbabwean experience demonstrates that when leadership resists change and openly engages in repressive practices to prevent public participation or discussion of reforms, it has already squandered the public good will towards believing that constitutional change is genuine. Before any post conflict society launches a constitutional reform process, society must debate and come to an understanding about what kind of society it wants to create. The constitution must be an exercise in building national consensus on the values and provisions to be included in the document. The thrust for a new constitution can thus be seen as a response to demands for democratic political systems of governance. The Zimbabwean case was a response to the need to build political institutions of good governance distorted by years of violence and impunity. Thus the future of good governance and development in Zimbabwe was predicated on the development of constitutional arrangements that guarantee viable institutions in which to conduct the business of governance through the development of a constitutional order that channels conflict into non violent settlement of differences, preserves the ability of individuals and groups that participate in continuing dialogue about policy as well as politics that guarantee accountable government and focuses attention on shared aspirations.

According to DuPree (2012) the founders of the NCA saw it as a way to channel frustration in a constructive direction that could recreate the political regime from the ground up. The interest in the constitution shows the awareness within civil society that the agreement between the government and its citizens needed to be reconstructed. This is borne out by the focus on civic education and dialogue that would connect people to a process of constitution building. The NCA thus emerged as an effort to create the bridge to political ideals, purposely not contesting party politics directly while attempting to get at the constitutional causes behind political corruption and malfeasance, namely a formal constitution and informal constitutional culture that enabled the political class to be sheltered from the demands of civil society (DuPree 2012).

The NCA was built on lessons learned by a broad coalition organised around labour, church, human rights and economic and political objectives. Each of these organisations came to the table because they believed that the ZANU PF government was the main impediment that stood in the way of realising developmental progress against their objectives and had begun to see the problem as the corruption of the party and its practice of squelching public participation in its policies. The balance of strategies between the promotion of civic education and dialogue around the constitution and the work to construct the new constitution demonstrates a commitment not just to the introduction of the new and better social contract but to a process to engage as many stakeholders as possible and to arrive at a better end by incorporating the diverse perspectives of the governed.

The experience of the NCA shows that ultimate success of the civil society to recreate the constitutional order was weakened by;

a) Contradiction of representation

The creation and execution of a new social order required that the two legitimate parties come to the table that is the government and the NCA. While the NCA certainly counted on the broad support from the coalition of several organizations it lacked the organizational capacity and the legitimacy to be a representative of everyone in the country as well as that of engaging all stakeholders for a new constitutional order. According to DuPree (2012) despite the idealism of the founders, it is not clear that the NCA success in drafting and

submitting a constitution could have been legitimate to put on the people. On the other hand, the government could not have carried out its own process in the manner it did in 2000 without recourse to the ideals and processes pioneered by the NCA (DuPree 2012). Furthermore the NCA's civic education and watchdog role over the government led process in both the 2000 and 2013 referendum provided important pressure for a more democratic vision and were informed by a membership that was engaged in ongoing civic education efforts. The pressure for the need of constitutional reform and the fact that constitutional reform remained on the agenda for over a decade shows the impact of the NCA. However, it should not have gotten carried away in thinking that only them have the legitimacy of being at the epi-centre of constitutional reform.

#### b) Divided Civil Society

In 2000, whilst the NCA managed to aggregate several civil society organizations, the church which had been crucial in forming the NCA moved out to participate in the government led constitutional commission in the 1999-2000 constitutional reform process. Another crucial civic body that did not join the NCA then was the Zimbabwe National Liberation War Veterans Association (ZNLWVA) who had demonstrated earlier that the government was now reneging from fulfilling the revolutionary war ideals and custom. The revolutionary ideals that should have been prioritized by the government was retaking the land and giving it to the landless poor according to the ZNLWA. The NCA being focused on the neoliberal rights based approach to any changes failed to embrace the ZNLWA. When the government sponsored draft constitution was rejected at the referendum in 2000, the ZNLWVA saw it as a direct attack on the need for land reform. Thus the intensification of the land occupations immediately after the triumph of the 'no vote' was a vote for an alternative constitutional order in which the largely economic remnants of colonial structure would be eradicated along with the perceived un-African imports such as homosexuality and universal human rights.

Furthermore, as noted in this research, the post 2000 NCA alienated most of its institutional members to the detriment of the organisation's advocacy and programming activities. It further led to question about the legitimacy of the NCA in advocating for constitutional reform. The question was who do the NCA represent? Instead, the NCA should have worked



hand in hand with other civil society organizations for it to be representative enough. As noted during the constitutional reform process of 2000, some members of the civil society participated and the situation was the same in 2010-2013 (COPAC process) when the majority of civil society organization thought it was better to participate in the process rather than rejecting and be left out in the process. The refusal by the NCA to participate in the COPAC process had severe repercussions for the organization as a constitution was adopted sadly without the input of an organization that was formed and had been at the forefront for constitutional reform.

### c) The Dependency Conundrum

The NCA and the government were interdependent on each other throughout the constitutional process in both the 2000 and the 2013 phases. In order to carry out its objectives, the NCA needed the minimal conditions of the rule of law for the conditions of peace to reach out and the approval for meetings as well as the enabling institutional framework on the things necessary for associative action such as registration, oversight, funding etc. The NCA needed to be able to access large constituencies and carry out a broad social dialogue, all of which were directly restricted by the government through the limiting of media access and challenged by the creation of parallel constitutional process that was enabled to better accomplish the NCA objectives. Likewise the government relied on the NCA not only to educate the participatory conditions that would legitimize its process but also to promote the passage of the results, a condition that it ignored to its own detriment at the end (DuPree 2012).

## 5.6 Conclusion

Civil society in Zimbabwe has been a contested terrain. The neo-liberal understanding of civil society in which this research is conceptually framed states that the understanding of civil society is state centric and exists firmly with the logic of state discourses and state politics. This thinking asserts that civil society is a progressive social force that struggles against the modern state with its democratic deficits and often authoritarian rule. The state entails totalizing compulsions contrary to voluntary and contractual civility of civil society (Helliker 2013). Thus civil society is the universalizing logic that opposes the particularistic

interests of the state and becomes the driving force behind the process of development and democratic modernity. Civil society is described as progressive and the state as antagonistic and regressive which could fit into the relationship between the NCA and the government.

A universalising civil society wages war against a particularistic and centralising state and is supposed to recover for a society a range of powers and activities that the state has usurped in previous decades (Helliker 2013). Thus the operations of civil society are contained within the relationalities of the liberal democratic state politics. Any antagonism between the state and civil society is based on the consensual framework on the rule of law through which the liberal state delimits and structures what is acceptable (civil society) politics. Ultimately civil society is supportive specifically of the liberal democratic state form leading to state-civil society collaborative and partnership arrangements that facilitate overall social domination. Thus civil society in Zimbabwe has operated in the neo-liberal fashion and this has created a friction with the state. Instead of working together with the state, it would seem that civil society was set up to provide an alternative centre of power.

At the same time, civil society in Africa and Zimbabwe in particular has been criticised by nationalist and marxist scholars as mere instruments of global donors that seeks to challenge the state as part of conscious conspiracy. Politics beyond this consensual domain are viewed by both the state and the civil society as outside the realm of authentic politics, hence illegitimate if not outright criminal. Thus nationalist and marxist scholars view civil society as in alliance with donors and foreign elements to engage in social crisis strategy that sought to make Zimbabwe ungovernable by prioritising issues of governance and democracy. Thus the NCA was viewed as anti land reform and more of a local representative of global capital and donors pursuing a craft imperialistic agenda. However, as this research has noted the NCA programmes and activities were not entirely designed to satisfy the donors. In fact the NCA lost funding from the donors because they refused to bow down to pressure from the donors in participating in both the CC and the COPAC constitutional reform process. The liberal notion involves highlighting the institutional make up or organisation and structure of civil society and its progressive character in nature and this neo liberal notion has failed to do justice to the varied kinds of textures of sociability in the rural fast track land reform in Zimbabwe.

Civil society organisations such as the NCA are regularly and sadly undemocratic (Makumbe 1998) and their internal processes are often characterised by unconstitutional procedures (Dorman 2001, McCandless 2011) as exemplified by the outline on the conflicts in the way the NCA constitution was amended to serve the interest of one person. One critic argued that Zimbabwean civil society have shown durable standards and have internalised the image of the ruling party in its tactics and general guidelines and is therefore fearful of exercising universally accepted freedoms and any meaning full change to strategies and leadership. (Mhlanga 2008).

Overall the aim of Zimbabwean civil society as exemplified by the NCA is to democratise the state because the state should be the guarantor of democracy. Therefore the NCA has sought to defend and advance political and civil liberties. The fact that at one time the NCA led to the formation of the opposition MDC and publicly declared their support for them in elections could have been a strategy to achieve power through the MDC in the contest for state hegemony.

## **5.7 Recommendations**

There is no doubt that the NCA made so much progress in the fourteen years of its existence as a civil society organisation. The NCA successfully used the language of and politics of constitutionalism to expand the meaning of development in Zimbabwe. However there are some who will always argue that the NCA could have done better. This research has shown that the relationship between the state and civil society should be of mutual respect and in that way it will be easy to work together. Zimbabwe was heavily polarised especially in the aftermath of the 2000 'No' vote and this had serious regression to the thrust of working together as the NCA and the government became very antagonistic dealing a blow to societal relations in the country and delaying the agenda of constitutional reform for over a decade.

The research recommends the following;

- The neo-liberal notion of civil society being anti-state should be examined with the view that they should be complementary and work closely with each other.

- Governments in the developing countries (including Zimbabwe) should not feel threatened by civil society and label them stooges of the west simply because they receive funding from the West. As seen in this study at both stages of constitutional reform process even the government received funding from the West. The NCA even resisted pressure from the donors and stood principally for their own beliefs. Therefore receiving funds does not take away civil society values and ideals.
- Civil society should not be political players. The NCA facilitated the formation of the opposition MDC and even made pronouncements urging their members to vote for the opposition. This compromises the impartiality of civil society.
- Civil society should make sure their house is in order and are champions of democracy, accountability and good governance within their organizations. This research has shown that there were problems in the way the NCA was managed with allegations of financial mismanagement.
- Civil society should not be dogmatic and should realise that in as much as they claim to be the people's representatives, they are not everyone. The NCA as the research has shown had members who could have been a quarter or less of the population and therefore for them to have expected to be the crafters of the constitution would have been a misnomer. The idea of a people driven process was perfect but this had to be as inclusive as possible.
- The NCA should not have transformed itself into a political party as this gives the impression that civil society is political and are only after political office. Already the country has had a gap with the coming in of the new constitution and the NCA could have capitalised on educating the people the contents and meaning of the new constitution. The population hardly know about the contents and meaning of the new constitution as they were rail-roaded to vote for the document by the political leaders.
- The government should be as inclusive as possible in its dealing with the people especially on developmental and governance issues rather than to take people for granted. The rejection of the government sponsored draft constitution in 2000 should have reminded the government that people ought to be fully consulted and their views respected.

## **5.8 Suggestions for Further Research**

This study sought to offer an examination of the role played by civil society by looking at the struggle for constitutional reform as a way of promoting good governance and development in Zimbabwe. There are other roles and angles that civil society can play in promoting good governance and development. Further research can therefore explore these other ways because the issue of good governance and development is very broad.

This research makes a modest contribution to the literature on civil society, comparative democratisation, good governance and development. It is not exhaustive though and further research could be done considering the fact that constitutional development is just but one way of exploring the study of good governance and development. Other researches could explore on the roles of other facets such as participation, accountability, transparency, rule of law, equity, effectiveness and efficiency in promoting good governance and development.

This research looked at civil society from a neo-liberal perspective. Given the fact that neo-liberalism has courted so much criticism for not being responsive to the development needs of the developing countries and that it is part of the neo-colonial agenda of the west, it is suggested here that further researches need to be done from a Marxist, nationalistic and post colonialist point of view.

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## APPENDIX: INTERVIEW SHEET

### MA RESEARCH QUESTIONNAIRE

Dear Respondent

My name is Donald Chokuda Zhou and I am studying towards a Masters of Arts Degree in Development Studies with UNISA. My research focus is on the Role of Civil Society Organisations in Promoting Good Governance and Development. I have identified the National Constitutional Assembly as my case study as it will help with practical ideas and examples on the role of civil society in promoting good governance and development. The responses to this questionnaire will prove valuable to this research. As part of the requirements of the Masters Course on Development Studies, this questionnaire serves to gather relevant information for the purposes of completion of the thesis on the role of civil society in promoting good governance and development.

This questionnaire forms part of the research process and in cases where information required exceeds the space provided, please attach relevant documents and indicate the section to which it belongs.

Please answer all questions and where you do not know indicate as such.

*The research findings will be analysed and documented for the purposes of submission to UNISA and will be available at the UNISA library. Copies can be made available on request.*

I thank you for your valuable contribution.

#### QUESTIONS

1. Can you in general list three roles of Civil Society Organisations (CSOs) in developing countries and Zimbabwe in particular?

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2. Do CSOs have a role in socio-economic and political issues affecting a country?

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3. Who is NCA?

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4. What is the structure of the NCA?

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5. What are the aims of NCA?  
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6. What are the objectives of the NCA?  
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7. What do you understand by good governance and development?  
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8. What has been the role played by the NCA in promoting good governance and development in Zimbabwe?  
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9. CSOs have been viewed as vital in partnering governments in various issues concerning good governance and development in the world. What role has NCA done in promoting these values in Zimbabwe?  
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10. Since the year 2000, the government of Zimbabwe has viewed CSOs as agents of regime change bent on destabilising the country. How has NCA managed to operate and be effective in its role and mandate?  
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11. What has been NCA's relationship with the government?  
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12. How has the government position impacted on NCA's activities?  
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13. What are some of the obstacles that NCA has faced in conducting their activities?  
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14. What role did NCA play in oppositional politics?  
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15. In what ways has the NCA influenced good governance and development in Zimbabwe?  
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16. Since 2000, Zimbabwe has been sliding down in the good governance and development index (the Mo Ibrahim and World Bank good governance index). How can NCA justify its existence?  
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17. How has NCA contributed to the Zimbabwe crisis?  
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18. Has the government ever taken NCA's views into consideration?  
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